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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 JOSE CHAVEZ, individually and on behalf of
16 all others similarly situated,

17 Plaintiff,

18 v.

19 FCA US LLC, a Delaware Limited Liability
20 Company; ROBERT BOSCH GMBH, a
corporation organized under the laws of
21 Germany; and ROBERT BOSCH LLC, a
Delaware Limited Liability Company,

22 Defendants.
23

No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION	1
II. JURISDICTION	5
III. VENUE.....	5
IV. PARTIES	5
A. Plaintiff	5
B. Defendants	7
1. FCA US LLC.....	7
2. The Bosch Defendants.....	7
V. FACTUAL ALLEGATIONS	9
A. The Environmental Challenges Posed by Diesel Engines and the U.S. Regulatory Response Thereto.....	9
B. The EcoDiesel Technology	10
C. FCA Advertised and Promoted EcoDiesel as Clean and EPA-Compliant.....	11
D. FCA Advertised and Promoted EcoDiesel as Fuel Efficient.....	13
E. FCA Advertised and Promoted EcoDiesel as Powerful	16
F. Worldwide Diesel Emissions Cheating	16
G. Defendants’ Dirty “Cheat Device” Scheme	19
H. Bosch Played a Critical Role in the Defeat Device Scheme	22
1. Volkswagen and Bosch conspire to develop the illegal defeat device.	23
2. Volkswagen and Bosch conspire to conceal the illegal “akustikfunktion”.	31
3. Volkswagen and Bosch conspire in the U.S. and Germany to elude U.S. regulators who regulated not just Volkswagen diesels, but all diesels.	33
4. Bosch keeps Volkswagen’s secret safe and pushes “clean” diesel in the U.S.	37
I. The Deception Involving FCA’s “EcoDiesels”	40
J. The Damage.....	42

1 VI. TOLLING OF THE STATUTE OF LIMITATIONS43
2 A. Discovery Rule Tolling43
3 B. Fraudulent Concealment Tolling43
4 C. Estoppel44
5 VII. CLASS ALLEGATIONS44
6 VIII. CLAIMS48
7 A. Claims Brought on Behalf of the Nationwide RICO Class48
8 COUNT I VIOLATIONS OF RACKETEER INFLUENCED AND CORRUPT
9 ORGANIZATIONS ACT (RICO) VIOLATION OF 18 U.S.C. § 1962(C) - (D)48
10 1. The Members of the Emissions Fraud Enterprise49
11 2. The Predicate Acts54
12 B. Claims Brought on Behalf of the California Class59
13 COUNT I FRAUD BY CONCEALMENT UNDER CALIFORNIA LAW59
14 COUNT II VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW (CAL.
15 BUS. & PROF. CODE § 17200 *ET SEQ.*)62
16 COUNT III VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES
17 ACT (CAL. CIV. CODE § 1750 *ET SEQ.*)64
18 COUNT IV VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW (CAL.
19 BUS. & PROF. CODE § 17500 *ET SEQ.*)66
20 C. Claims Brought on Behalf of the Alabama Subclass67
21 COUNT I VIOLATIONS OF THE ALABAMA DECEPTIVE TRADE PRACTICES ACT
22 (ALA. CODE § 8-19-1 *ET SEQ.*)67
23 COUNT II FRAUDULENT CONCEALMENT (BASED ON ALABAMA LAW)68
24 D. Claims Brought on Behalf of the Alaska Subclass73
25 COUNT I VIOLATION OF THE ALASKA UNFAIR TRADE PRACTICES AND
26 CONSUMER PROTECTION ACT (ALASKA STAT. ANN. § 45.50.471 *ET SEQ.*)73
27 COUNT II FRAUDULENT CONCEALMENT (BASED ON ALASKA LAW)73
28 E. Claims Brought on Behalf of the Arizona Subclass78
COUNT I VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT (ARIZ. REV.
STAT. § 44-1521 *ET SEQ.*)78
COUNT II FRAUDULENT CONCEALMENT (BASED ON ARIZONA LAW)80

1 F. Claims Brought on Behalf of the Arkansas Subclass85

2 COUNT I VIOLATIONS OF THE DECEPTIVE TRADE PRACTICE ACT (ARK. CODE

3 ANN. § 4-88-101 *ET SEQ.*)85

4 COUNT II FRAUDULENT CONCEALMENT (BASED ON ARKANSAS LAW).....88

5 G. Claims Brought on Behalf of the California Subclass.....92

6 COUNT I VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW (CAL.

7 BUS. & PROF. CODE § 17200 *ET SEQ.*).....92

8 COUNT II VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES

9 ACT (CAL. CIV. CODE § 1750 *ET SEQ.*).....95

10 COUNT III VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW (CAL.

11 BUS. & PROF. CODE § 17500 *ET SEQ.*).....99

12 COUNT IV FRAUDULENT CONCEALMENT (BASED ON CALIFORNIA LAW)100

13 H. Claims Brought on Behalf of the Colorado Subclass105

14 COUNT I VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT

15 (COLO. REV. STAT. § 6-1-101 *ET SEQ.*).....105

16 COUNT II FRAUDULENT CONCEALMENT (BASED ON COLORADO LAW).....108

17 I. Claims Brought on Behalf of the Connecticut Subclass112

18 COUNT I VIOLATIONS OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT

19 (CONN. GEN. STAT. ANN. § 42-110A *ET SEQ.*).....112

20 COUNT II FRAUDULENT NON-DISCLOSURE (BASED ON CONNECTICUT LAW)115

21 J. Claims Brought on Behalf of the Delaware Subclass120

22 COUNT I VIOLATIONS OF THE DELAWARE CONSUMER FRAUD ACT (DEL. CODE

23 § 2513 *ET SEQ.*).....120

24 COUNT II FRAUDULENT CONCEALMENT (BASED ON DELAWARE LAW).....123

25 K. Claims Brought on Behalf of the District of Columbia Subclass.....127

26 COUNT I VIOLATION OF THE CONSUMER PROTECTION PROCEDURES ACT

27 (D.C. CODE § 28-3901 *ET SEQ.*).....127

28 COUNT II FRAUDULENT CONCEALMENT (BASED ON DISTRICT OF COLUMBIA

LAW).....130

L. Claims Brought on Behalf of the Florida Subclass134

COUNT I VIOLATIONS OF THE FLORIDA UNFAIR AND DECEPTIVE TRADE

PRACTICES ACT (FLA. STAT. § 501.201 *ET SEQ.*)134

COUNT II FRAUDULENT CONCEALMENT (BASED ON FLORIDA LAW).....137

1 M. Claims Brought on Behalf of the Georgia Subclass 142

2 COUNT I VIOLATION OF GEORGIA’S FAIR BUSINESS PRACTICES ACT (GA.
3 CODE ANN. § 10-1-390 *ET SEQ.*)..... 142

4 COUNT II FRAUDULENT CONCEALMENT (BASED ON GEORGIA LAW) 142

5 N. Claims Brought on Behalf of the Hawaii Subclass 147

6 COUNT I UNFAIR AND DECEPTIVE ACTS IN VIOLATION OF HAWAII LAW (HAW.
7 REV. STAT. § 480 *ET SEQ.*)..... 147

8 COUNT II FRAUDULENT CONCEALMENT (BASED ON HAWAII LAW) 150

9 O. Claims Brought on Behalf of the Idaho Subclass..... 154

10 COUNT I VIOLATIONS OF THE IDAHO CONSUMER PROTECTION ACT (IDAHO
11 CODE § 48-601 *ET SEQ.*)..... 154

12 COUNT II FRAUDULENT CONCEALMENT (BASED ON IDAHO LAW) 157

13 P. Claims Brought on Behalf of the Illinois Subclass 161

14 COUNT I VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE
15 BUSINESS PRACTICES ACT (815 ILL. COMP. STAT. 505/1 *ET SEQ.* AND 720
16 ILL. COMP. STAT. 295/1A) 161

17 COUNT II FRAUDULENT CONCEALMENT (BASED ON ILLINOIS LAW) 164

18 Q. Claims Brought on Behalf of the Kansas Subclass 169

19 COUNT I VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT (KAN.
20 STAT. ANN. § 50-623 *ET SEQ.*)..... 169

21 COUNT II FRAUDULENT CONCEALMENT (BASED ON KANSAS LAW) 172

22 R. Claims Brought on Behalf of the Kentucky Subclass 176

23 COUNT I VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT (KY.
24 REV. STAT. ANN. § 367.110 *ET SEQ.*)..... 176

25 COUNT II FRAUD BY OMISSION (BASED ON KENTUCKY LAW)..... 179

26 S. Claims Brought on Behalf of the Louisiana Subclass 183

27 COUNT I VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND
28 CONSUMER PROTECTION LAW (LA. STAT. ANN. § 51:1401 *ET SEQ.*) 183

COUNT II FRAUDULENT CONCEALMENT (BASED ON LOUISIANA LAW) 186

T. Claims Brought on Behalf of the Maine Subclass..... 190

COUNT I VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT (ME. REV.
STAT. ANN. TIT. 5, § 205-A *ET SEQ.*)..... 190

1 COUNT II FRAUDULENT CONCEALMENT (BASED ON MAINE LAW)191

2 U. Claims Brought on Behalf of the Maryland Subclass195

3 COUNT I VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT (MD.
4 CODE ANN., COM. LAW § 13-101 *ET SEQ.*).....195

5 COUNT II FRAUDULENT CONCEALMENT (BASED ON MARYLAND LAW)198

6 V. Claims Brought on Behalf of the Massachusetts Subclass.....203

7 COUNT I VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION
8 ACT (MASS. GEN. LAWS CH. 93A).....203

9 COUNT II FRAUDULENT CONCEALMENT (BASED ON MASSACHUSETTS LAW)203

10 W. Claims Brought on Behalf of the Michigan Subclass208

11 COUNT I VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT (MICH.
12 COMP. LAWS § 445.903 *ET SEQ.*)208

13 COUNT II FRAUDULENT CONCEALMENT (BASED ON MICHIGAN LAW).....210

14 X. Claims Brought on Behalf of the Minnesota Subclass215

15 COUNT I VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD
16 ACT (MINN. STAT. § 325F.68 *ET SEQ.*).....215

17 COUNT II FRAUDULENT CONCEALMENT (BASED ON MINNESOTA LAW).....218

18 Y. Claims Brought on Behalf of the Missouri Subclass.....222

19 COUNT I VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT
20 (MO. REV. STAT. § 407.010 *ET SEQ.*)222

21 COUNT II FRAUDULENT CONCEALMENT (BASED ON MISSOURI LAW)225

22 Z. Claims Brought on Behalf of the Montana Subclass.....230

23 COUNT I VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND
24 CONSUMER PROTECTION ACT OF 1973 (MONT. CODE ANN. § 30-14-101 *ET*
25 *SEQ.*)230

26 COUNT II FRAUDULENT CONCEALMENT (BASED ON MONTANA LAW).....233

27 AA. Claims Brought on Behalf of the Nebraska Subclass.....238

28 COUNT I VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT (NEB.
REV. STAT. § 59-1601 *ET SEQ.*)238

COUNT II FRAUDULENT CONCEALMENT (BASED ON NEBRASKA LAW).....240

BB. Claims Brought on Behalf of the Nevada Subclass.....245

1	COUNT I VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT (NEV. REV. STAT. § 598.0903 <i>ET SEQ.</i>)	245
2		
3	COUNT II FRAUDULENT CONCEALMENT (BASED ON NEVADA LAW)	248
4	CC. Claims Brought on Behalf of the New Hampshire Subclass under New Hampshire Law	252
5	COUNT I VIOLATION OF N.H. CONSUMER PROTECTION ACT (N.H. REV. STAT. § 358-A:1 <i>ET SEQ.</i>)	252
6		
7	COUNT II FRAUDULENT CONCEALMENT (BASED ON NEW HAMPSHIRE LAW).....	255
8	DD. Claims Brought on Behalf of the New Jersey Subclass Under New Jersey Law....	259
9	COUNT I VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT (N.J. STAT. ANN. § 56:8-1 <i>ET SEQ.</i>).....	259
10	COUNT II FRAUDULENT CONCEALMENT (BASED ON NEW JERSEY LAW).....	262
11	EE. Claims Brought on Behalf of the New Mexico Subclass	266
12	COUNT I VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT (N.M. STAT. ANN. § 57-12-1 <i>ET SEQ.</i>).....	266
13		
14	COUNT II FRAUDULENT CONCEALMENT (BASED ON NEW MEXICO LAW)	269
15	FF. Claims Brought on Behalf of the New York Subclass	274
16	COUNT I VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (N.Y. GEN. BUS. LAW § 349).....	274
17	COUNT II VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350 (N.Y. GEN. BUS. LAW § 350).....	276
18		
19	COUNT III FRAUDULENT CONCEALMENT (BASED ON NEW YORK LAW)	279
20	GG. Claims Brought on Behalf of the North Carolina Subclass.....	283
21	COUNT I VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE ACTS AND PRACTICES ACT (N.C. GEN. STAT. § 75-1.1 <i>ET SEQ.</i>).....	283
22	COUNT II FRAUDULENT CONCEALMENT (BASED ON NORTH CAROLINA LAW).....	286
23	HH. Claims Brought on Behalf of the North Dakota Subclass	290
24	COUNT I VIOLATION OF THE NORTH DAKOTA CONSUMER FRAUD ACT (N.D. CENT. CODE § 51-15-02).....	290
25		
26	COUNT II FRAUDULENT CONCEALMENT (BASED ON NORTH DAKOTA LAW)	293
27	II. Claims Brought on Behalf of the Ohio Subclass.....	298
28	COUNT I VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT (OHIO REV. CODE § 1345.01 <i>ET SEQ.</i>).....	298

1 COUNT II FRAUDULENT CONCEALMENT (BASED ON OHIO LAW)301

2 JJ. Claims Brought on Behalf of the Oklahoma Subclass305

3 COUNT I VIOLATION OF OKLAHOMA CONSUMER PROTECTION ACT (OKLA.
4 STAT. TIT. 15 § 751 *ET SEQ.*).....305

5 COUNT II FRAUDULENT CONCEALMENT (BASED ON OKLAHOMA LAW).....308

6 KK. Claims Brought on Behalf of the Pennsylvania Subclass313

7 COUNT I VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES
8 AND CONSUMER PROTECTION LAW (73 P.S. § 201-1 *ET SEQ.*).....313

9 COUNT II FRAUDULENT CONCEALMENT (BASED ON PENNSYLVANIA LAW)316

10 LL. Claims Brought on Behalf of the Rhode Island Subclass.....320

11 COUNT I VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES AND
12 CONSUMER PROTECTION ACT (R.I. GEN. LAWS § 6-13.1 *ET SEQ.*)320

13 COUNT II FRAUDULENT CONCEALMENT (BASED ON RHODE ISLAND LAW).....323

14 MM. Claims Brought on Behalf of the South Carolina Subclass.....328

15 COUNT I VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES
16 ACT (S.C. CODE ANN. § 39-5-10 *ET SEQ.*)328

17 COUNT II VIOLATIONS OF THE SOUTH CAROLINA REGULATION OF
18 MANUFACTURERS, DISTRIBUTORS, AND DEALERS ACT (S.C. CODE ANN.
19 § 56-15-10 *ET SEQ.*)330

20 COUNT III FRAUDULENT CONCEALMENT (BASED ON SOUTH CAROLINA LAW).....331

21 NN. Claims Brought on Behalf of the Tennessee Subclass336

22 COUNT I VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT
23 (TENN. CODE ANN. § 47-18-101 *ET SEQ.*).....336

24 COUNT II FRAUDULENT CONCEALMENT (BASED ON TENNESSEE LAW).....339

25 OO. Claims Brought on Behalf of the Texas Subclass343

26 COUNT I VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT (TEX. BUS.
27 & COM. CODE § 17.41 *ET SEQ.*).....343

28 COUNT II FRAUDULENT CONCEALMENT (BASED ON TEXAS LAW)344

PP. Claims Brought on Behalf of the Utah Subclass348

COUNT I VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT
(UTAH CODE ANN. § 13-11-1 *ET SEQ.*)348

COUNT II FRAUDULENT CONCEALMENT (BASED ON UTAH LAW)351

1 QQ. Claims Brought on Behalf of the Vermont Subclass.....356

2 COUNT I VIOLATION OF VERMONT CONSUMER FRAUD ACT (VT. STAT. ANN.
3 TIT. 9, § 2451 *ET SEQ.*).....356

4 COUNT II FRAUDULENT CONCEALMENT (BASED ON VERMONT LAW)359

5 RR. Claims Brought on Behalf of the Virginia Subclass363

6 COUNT I VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT (VA.
7 CODE ANN. § 59.1-196 *ET SEQ.*).....363

8 COUNT II FRAUDULENT CONCEALMENT (BASED ON VIIRGINIA LAW).....366

9 SS. Claims Brought on Behalf of the Washington Subclass371

10 COUNT I VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT
11 (WASH. REV. CODE ANN. § 19.86.010 *ET SEQ.*).....371

12 COUNT II FRAUDULENT CONCEALMENT (BASED ON WASHINGTON LAW)374

13 TT. Claims Brought on Behalf of the West Virginia Subclass378

14 COUNT I VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND
15 PROTECTION ACT (W. VA. CODE § 46A-1-101 *ET SEQ.*).....378

16 COUNT II FRAUDULENT CONCEALMENT (BASED ON WEST VIRGINIA LAW)379

17 UU. Claims Brought on Behalf of the Wisconsin Subclass383

18 COUNT I VIOLATIONS OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT
19 (WIS. STAT. § 110.18)383

20 COUNT II FRAUDULENT CONCEALMENT (BASED ON WISCONSIN LAW)386

21 PRAYER FOR RELIEF.....391

22 DEMAND FOR JURY TRIAL391

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1 Plaintiff Jose Chavez, individually and on behalf of all others similarly situated (the “Class”),
2 alleges the following based upon the investigation of counsel, the review of scientific papers, and the
3 investigation of experts:

4 **I. INTRODUCTION**

5 1. This case involves trucks sold as “EcoDiesels” which, like the infamous Volkswagen
6 Diesels, are hardly “Eco” and in fact belch out harmful pollutants far in excess of both U.S. and State
7 of California emissions standards, but also in excess of what a reasonable consumer would expect
8 from an “Eco” vehicle.

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

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

18 4. One byproduct of diesel combustion is oxides of nitrogen (“NOx”), which generally
19 describes several compounds comprised of nitrogen and oxygen atoms. These compounds are
20 formed in the cylinder of the engine during the high temperature combustion process. NOx pollution
21 contributes to nitrogen dioxide, particulate matter in the air, and reacts with sunlight in the
22 atmosphere to form ozone. Exposure to these pollutants has been linked with serious health dangers,
23 including serious respiratory illnesses and premature death due to respiratory-related or
24 cardiovascular-related effects. The U.S. government, through the Environmental Protection Agency
25 (EPA), and many states, like California, have passed and enforced laws designed to protect U.S.
26 citizens from these pollutants and certain chemicals and agents known to cause disease in humans.
27 Automobile manufacturers must abide by these laws and must adhere to EPA rules and regulations.
28

1 5. Seeing a major opportunity for growth, almost all of the major automobile
2 manufacturers rushed to develop “clean diesel” and promoted new diesel vehicles as environmentally
3 friendly and clean. Volkswagen, Mercedes, GM, Fiat Chrysler America (FCA), and other
4 manufacturers began selling diesel cars and trucks as more powerful, yet also as an environmentally
5 friendly alternative to gasoline vehicles. And the marketing worked, as millions of diesel vehicles
6 were purchased between 2007 and 2016.

7 6. The green bubble with respect to diesel vehicles popped on September 18, 2015,
8 when the EPA issued a Notice of Violation of the Clean Air Act (the “First NOV”) to Volkswagen
9 Group of America, Audi AG, and Volkswagen America for installing illegal “defeat devices” in
10 2009–2015 Volkswagen and Audi diesel cars equipped with 2.0-liter diesel engines. A defeat
11 device, as defined by the EPA, is any apparatus that unduly reduces the effectiveness of emissions
12 control systems under conditions a vehicle may reasonably be expected to experience. The EPA
13 found that the Volkswagen/Audi defeat device allowed the vehicles to pass emissions testing while
14 in the real world these vehicles polluted far in excess of emissions standards. The California Air
15 Resources Board also announced that it had initiated an enforcement investigation of Volkswagen
16 pertaining to the vehicles at issue in the First NOV.

17 7. On September 22, 2015, Volkswagen announced that 11 million diesel cars
18 worldwide were installed with the same defeat device software that had evaded emissions testing by
19 U.S. regulators. Contemporaneously, Volkswagen announced that it had set aside reserves of 6.5
20 billion euros (\$7.3 billion) in the third quarter to address the matter.¹

21 8. Volkswagen wasn’t alone—soon, government agencies began to reveal that many
22 manufacturers had produced dozens of models that were exceeding emissions standards.

23 9. The “Dieselgate” issue is not limited to passenger vehicles, and hence this case. In
24 2001, the EPA announced stringent emissions standards for heavy-duty diesel engines, slated to take
25
26

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

1 effect in 2010. Cummins Inc. and Chrysler (now known as FCA US LLC²) saw a golden business
 2 opportunity and worked together to build a truck that, at least on paper, met these standards, three
 3 years ahead of schedule. Cummins announced the new truck as the:³

4 [S]trongest, cleanest, quietest best-in-class 2007 Cummins Turbo
 5 Diesel. Leapfrogging the competition, the Cummins 6.7-liter Turbo
 6 Diesel engine, used exclusively in Dodge Ram 2500 and 3500 Heavy
 7 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.

8 10. FCA decided to push into this market beyond the Dodge Ram 2500 and 3500 and, in
 9 2014, it introduced the Dodge Ram “EcoDiesel” and the Grand Cherokee Overland “EcoDiesel.”

10 11. To appeal to environmentally conscious consumers, FCA *vigorously* markets its
 11 EcoDiesel vehicles as “clean diesel” with ultra-low emissions, high fuel economy, and powerful
 12 torque and towing capacity. FCA calls its EcoDiesel “ultra clean,” “emissions compliant,” and
 13 claims that “**no NOx**” exits the tailpipe. FCA charges a premium for EcoDiesel-equipped vehicles.
 14 For example, selecting the 3.0-liter EcoDiesel engine for the 2016 Dodge Ram 1500 Laramie adds
 15 \$4,770 to the purchase price. And the 2016 Jeep Grand Cherokee Overland EcoDiesel costs \$4,500
 16 more than its gasoline counterpart.

17 12. These representations are deceptive and false. FCA has programmed its EcoDiesel
 18 vehicles to significantly reduce the effectiveness of the NOx reduction systems during real-world
 19 driving conditions. On-road testing has confirmed that FCA’s so-called EcoDiesel cars produced
 20 NOx emissions at an average of 222 mg/mile in city driving (four times the FTP standard of 50
 21 mg/mile) and 353 mg/mile in highway driving (five times higher than the U.S. highway standard of
 22 70 mg/mile). In many instances, NOx values were in excess of 1,600 mg/mile, more than 20 times
 23 the standards.

24 13. Thus, FCA manufactures, designs, markets, sells, and leases certain “EcoDiesel”
 25 vehicles as if they are “reduced emissions” cars that are cleaner than gasoline cars, when, in fact,

26
 27 ² FCA stands for Fiat Chrysler Automobiles.

28 ³ *Cummins Reveals Best-In-Class 2007 Turbo Diesel Engine*, Cummins Inc. (Jan. 23, 2007),
http://investor.cummins.com/phoenix.zhtml?c=112916&p=irol-newsArticle_pf&ID=953050.

1 these FCA vehicles are not “Eco” and emit far more pollutants than their gasoline-fueled
2 counterparts. Plaintiff alleges that the following FCA models powered by EcoDiesel engines are
3 affected by the unlawful, unfair, deceptive, and otherwise defective emission controls utilized by
4 FCA: 2014–2016 Dodge Ram 1500 and 2014–2016 Jeep Grand Cherokee (the “Affected Vehicles”).

5 14. In addition, FCA markets the vehicles as fuel efficient, if not the “best” of any full-
6 sized pickup. Without cheating emissions, FCA could not achieve the fuel economy and range it
7 promises.

8 15. FCA did not previously disclose to Plaintiff or Class members that in real-world
9 driving conditions, the Affected Vehicles can only achieve high fuel economy and powerful towing
10 by spewing unmitigated NOx into the air. FCA never disclosed that it prioritizes engine power and
11 profits over people.

12 16. FCA never disclosed to consumers that the Affected Vehicles may be “clean” diesels
13 in very limited circumstances, but are “dirty” diesels under most driving conditions. FCA never
14 disclosed that it prioritizes engine power and profits over the environment and people’s time and
15 money. FCA never disclosed that the Affected Vehicles’ emissions materially exceed the emissions
16 from gasoline-powered vehicles, that the emissions exceed what a reasonable consumer would
17 expect from a “clean diesel,” and that the emissions materially exceed applicable emissions limits in
18 real-world driving conditions. And FCA collected a premium for these trucks by selling them at
19 thousands of dollars over the cost of a comparable gas truck.

20 17. FCA did not act alone. At the heart of the diesel scandal in the United States and
21 Europe are Bosch GmbH and Bosch LLC (together, “Bosch”). Bosch was an active and knowing
22 participant in the scheme to evade U.S. emissions requirements. Bosch manufactured and tested the
23 electronic diesel control (“EDC”) that allowed FCA to implement the defeat device.

24 18. Plaintiff brings this action individually and on behalf of all other current and former
25 owners or lessees of the Affected Vehicles. Plaintiff seeks damages, injunctive relief, and equitable
26 relief for FCA’s misconduct related to the design, manufacture, marketing, sale, and lease of
27 Affected Vehicles, as alleged in this Complaint.

II. JURISDICTION

19. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiff’s claims arise under the RICO Act, 18 U.S.C. § 1962. The Court also has diversity jurisdiction because Plaintiff and Defendants reside in different states. The Court has supplemental jurisdiction over Plaintiff’s state law claims under 28 U.S.C. § 1367. This Court also has original jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(a)(1), as modified by the Class Action Fairness Act of 2005, because Plaintiff and Defendants are citizens of different states; there are more than 100 members of the Class (as defined herein); the aggregate amount in controversy exceeds \$5 million, exclusive of attorneys’ fees, interest, and costs; and Class members reside across the United States. The citizenship of each party is described further below in the “Parties” section.

20. This Court has personal jurisdiction over each Defendant pursuant to 18 U.S.C. § 1965(b) & (d), and/or Cal. Code Civ. P. § 410.10. This Court has personal jurisdiction over Defendants because they have minimum contacts with the United States, this judicial district, and this State, and intentionally availed themselves of the laws of the United States and this state by conducting a substantial amount of business throughout the state, including the design, manufacture, distribution, testing, sale, lease, and/or warranty of FCA vehicles in this State and District. At least in part because of Defendants’ misconduct as alleged in this lawsuit, Affected Vehicles ended up on this state’s roads and in dozens of franchise dealerships.

III. VENUE

21. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District. Moreover, FCA has marketed, advertised, sold, and leased the Affected Vehicles within this District.

IV. PARTIES

A. Plaintiff

22. Plaintiff Jose Chavez is an individual residing in Antioch, California. On August 26, 2016, Plaintiff purchased a new model year 2016 Dodge Ram 1500 EcoDiesel from Hilltop Chrysler Jeep Dodge, an authorized FCA dealer in Richmond, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased it only achieved its

1 promised fuel economy and performance because it was equipped with an emissions system that,
2 during normal driving conditions, emitted many multiples of the allowed level of pollutants such as
3 NOx. FCA's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing,
4 selling, and leasing the vehicle without proper emission controls has caused Plaintiff out-of-pocket
5 loss, future attempted repairs, and diminished value of his vehicle. FCA knew about, or recklessly
6 disregarded, the inadequate emission controls during normal driving conditions, but did not disclose
7 such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but
8 mistaken, belief that his vehicle was a "clean diesel," complied with U.S. emissions standards, was
9 properly EPA-certified, and would retain all of its promised fuel economy and performance
10 throughout its useful life.

11 23. Plaintiff selected and ultimately purchased his vehicle, in part, because of the
12 EcoDiesel system, as represented through advertisements and representations made by FCA.
13 Plaintiff recalls that before he purchased the vehicle, he reviewed advertisements on FCA's website
14 and representations from FCA's authorized dealer touting the efficiency, fuel economy, and power
15 and performance of the engine. He also recalls that before purchasing the vehicle, he reviewed
16 advertisements on FCA's website and representations from FCA's authorized dealer that the Dodge
17 Ram 1500 complied with U.S. emissions standards and was a low-emitting vehicle. None of the
18 advertisements reviewed or representations received by Plaintiff contained any disclosure relating to
19 the unlawfully high emissions. Had FCA disclosed this design, and the fact that the Ram 1500
20 actually emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle,
21 or would have paid less for it.

22 24. Plaintiff and each Class member has suffered an ascertainable loss as a result of
23 FCA's omissions and/or misrepresentations associated with the EcoDiesel engine system, including,
24 but not limited to, a high premium for the EcoDiesel engine compared to what they would have paid
25 for a gas-powered engine, out-of-pocket losses and future attempted repairs, future additional fuel
26 costs, decreased performance of the vehicles, and diminished value of the vehicles.

1 25. Neither FCA nor any of its agents, dealers, or other representatives informed Plaintiff
2 or Class members of the existence of the unlawfully high emissions and/or defective nature of the
3 EcoDiesel engine system of the Affected Vehicles prior to purchase.

4 **B. Defendants**

5 **1. FCA US LLC**

6 26. FCA US LLC (“FCA”) is a limited liability company organized and existing under
7 the laws of the State of Delaware, and is wholly owned by holding company Fiat Chrysler
8 Automobiles N.V., a Dutch corporation headquartered in London, United Kingdom. FCA’s
9 principal place of business and headquarters is in Auburn Hills, Michigan.

10 27. FCA is a motor vehicle manufacturer and a licensed distributor of new, previously
11 untitled Chrysler, Dodge, Jeep, and Ram brand motor vehicles. FCA’s Chrysler brand is one of the
12 “Big Three” American automobile brands. FCA engages in commerce by distributing and selling
13 new and unused passenger cars and motor vehicles under its Chrysler, Dodge, Jeep, and Ram brands.
14 Other major divisions of FCA include Mopar, its automotive parts and accessories division, and
15 SRT, its performance automobile division. As of 2015, FCA is the seventh largest automaker in the
16 world by unit production.

17 28. FCA, through its various entities, designs, manufactures, markets, distributes, and
18 sells automobiles in California and multiple other locations in the U.S. and worldwide. FCA and/or
19 its agents designed, manufactured, and installed the EcoDiesel engine systems in the Affected
20 Vehicles. FCA also developed and disseminated the owner’s manuals and warranty booklets,
21 advertisements, and other promotional materials relating to the Affected Vehicles.

22 **2. The Bosch Defendants**

23 29. From at least 2005 to 2015, Robert Bosch GmbH, Robert Bosch LLC and currently
24 unnamed Bosch employees (together, “Bosch”) were knowing and active participants in the creation,
25 development, marketing, and sale of illegal defeat devices specifically designed to evade U.S.
26 emissions requirements in vehicles sold solely in the United States. These vehicles include the
27 Dodge Ram 1500 EcoDiesel and Jeep Grand Cherokee EcoDiesel, as well as diesels made by
28 Volkswagen, Audi, Porsche, and Mercedes. Bosch participated not just in the development of the

1 defeat device, but in the scheme to prevent U.S. regulators from uncovering the device's true
2 functionality. Moreover, Bosch's participation was not limited to engineering the defeat device (in a
3 collaboration described as unusually close). Rather, Bosch marketed "Clean Diesel" in the United
4 States and lobbied U.S. regulators to approve "Clean Diesel," another highly unusual activity for a
5 mere supplier. These lobbying efforts, taken together with evidence of Bosch's actual knowledge
6 that the "akustikfunktion" operated as a defeat device, and participation in concealing the true
7 functionality of the device from U.S. regulators, can be interpreted only one way under U.S. law:
8 Bosch was a knowing and active participant in a massive, decade-long conspiracy with Volkswagen,
9 FCA, and others to defraud U.S. consumers, regulators, and diesel car purchasers or lessees.

10 30. Robert Bosch GmbH is a German multinational engineering and electronics company
11 headquartered in Gerlingen, Germany. Robert Bosch GmbH is the parent company of Robert Bosch
12 LLC. Robert Bosch GmbH, directly and/or through its North-American subsidiary Robert Bosch
13 LLC, at all material times, designed, manufactured, and supplied elements of the defeat device to
14 Volkswagen for use in the Affected Vehicles. Bosch GmbH is subject to the personal jurisdiction of
15 this Court because it has availed itself of the laws of the United States through its management and
16 control over Bosch, LLC, and over the design, development, manufacture, distribution, testing, and
17 sale of hundreds of thousands of the defeat devices installed in the Affected Vehicles sold or leased
18 in the U.S.

19 31. Robert Bosch LLC is a Delaware limited liability company with its principal place of
20 business located at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331. Robert Bosch LLC
21 is a wholly-owned subsidiary of Robert Bosch GmbH. Robert Bosch LLC, directly and/or in
22 conjunction with its parent Robert Bosch GmbH, at all material times, designed, manufactured, and
23 supplied elements of the defeat device to FCA for use in the Affected Vehicles.

24 32. Both Robert Bosch GmbH and Robert Bosch LLC operate under the umbrella of the
25 Bosch Group, which encompasses some 340 subsidiaries and companies. The Bosch Group is
26 divided into four business sectors: Mobility Solutions (formerly Automotive Technology), Industrial
27 Technology, Consumer Goods, and Energy and Building Technology. The Mobility Solutions
28 sector, which supplies parts to the automotive industry, and its Diesel Systems division, which

1 develops, manufacturers, and supplies diesel systems, are particularly at issue here and include the
2 relevant individuals at both Bosch GmbH and Bosch LLC. Bosch's sectors and divisions are
3 grouped not by location, but by subject matter. Mobility Solutions includes the relevant individuals
4 at both Bosch GmbH and Bosch LLC. Regardless of whether an individual works for Bosch in
5 Germany or the U.S., the individual holds him or herself out as working for Bosch. This collective
6 identity is captured by Bosch's mission statement: "We are Bosch," a unifying principle that links
7 each entity and person within the Bosch Group.⁴

8 V. FACTUAL ALLEGATIONS

9 A. The Environmental Challenges Posed by Diesel Engines and the U.S. Regulatory 10 Response Thereto

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

15 34. The U.S. Clean Air Act has strict emissions standards for vehicles, and it requires
16 vehicle manufacturers to certify to the EPA that the vehicles sold in the U.S. meet applicable federal
17 emissions standards to control air pollution. Every vehicle sold in the U.S. must be covered by an
18 EPA-issued certificate of conformity.

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

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

25 37. Instead of using a spark plug to combust highly refined fuel with short hydrocarbon
26 chains, as gasoline engines do, diesel engines compress a mist of liquid fuel and air to very high

27 ⁴ Bosch 2014 Annual Report, *Experiencing quality of life*, available at [http://www.bosch.com/
28 media/com/bosch_group/bosch_in_figures/publications/archive/GB2014_EN.pdf](http://www.bosch.com/media/com/bosch_group/bosch_in_figures/publications/archive/GB2014_EN.pdf) (last accessed
November 30, 2016).

1 temperatures and pressures, which causes the diesel to spontaneously combust. This causes a more
2 powerful compression of the pistons, which produces greater engine torque (that is, more power).

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

5 39. But this greater energy and fuel efficiency comes at a cost: diesel produces dirtier and
6 more dangerous emissions. One byproduct of diesel combustion is oxides of nitrogen (NOx), which
7 includes a variety of nitrogen and oxygen chemical compounds that only form at high temperatures.

8 40. NOx pollution contributes to nitrogen dioxide, particulate matter in the air, and reacts
9 with sunlight in the atmosphere to form ozone. Exposure to these pollutants has been linked with
10 serious health dangers, including asthma attacks and other respiratory illnesses serious enough to
11 send people to the hospital. Ozone and particulate matter exposure have been associated with
12 premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly,
13 and people with pre-existing respiratory illness are at acute risk of health effects from these
14 pollutants.

15 **B. The EcoDiesel Technology**

16 41. Vehicle manufacturers have struggled to produce diesel engines that have high power
17 and strong fuel efficiency but also cleaner emissions. Removing NOx from the untreated exhaust is
18 difficult, and diesel vehicle makers have reacted by trying to remove NOx from vehicles' exhaust
19 using catalysts.

20 42. FCA's response to the challenge has been the EcoDiesel engine.

21 43. Emission reductions start in the cylinder with advanced fuel injection strategies.
22 After the byproducts of combustion leave the engine, the EcoDiesel technology treats these
23 emissions using a diesel oxidation catalyst, diesel particulate filter, and selective catalyst reduction.

24 44. The EcoDiesel approach, when it is operational, results in cleaner emissions without
25 compromising power or fuel economy.

1 **C. FCA Advertised and Promoted EcoDiesel as Clean and EPA-Compliant**

2 45. In order to counter beliefs that diesel engines produce “dirty” emissions and to
3 capitalize on consumers’ desire to protect the environment, FCA aggressively markets the EcoDiesel
4 engine as being environmentally friendly, using a leaf and green coloring in its logo:



8 46. The central theme in FCA’s diesel engine marketing is the promise of clean diesel:⁵



19 47. In its EcoDiesel advertising, FCA specifically targets consumers “who want to drive
20 an efficient, environmentally-friendly truck without sacrificing capability or performance.”⁶ Indeed,
21 it claims that the Ram 1500 was “the NAFTA market’s first and only light-duty pickup powered by
22 clean diesel technology.”⁷

23
24 ⁵ Dale Jewett, *EcoDiesel: An Essential Tool for Every Outdoorsman*, Objects in the Mirror...
(blog operated by FCA Digital Media) (May 22, 2015), <https://blog.fcanorthamerica.com/2015/05/22/ecodiesel-an-essential-tool-for-every-outdoorsman/>.

25 ⁶ *The 2014 Ram 1500 with EcoDiesel Engine, Available Soon at a Dealer Near You*, Ram Zone
26 (Ram trucks blog operated by FCA US LLC) (July 16, 2013), <https://blog.ramtrucks.com/features/the-2014-ram-1500-with-ecodiesel-engine-available-soon-at-a-dealer-near-you/>.

27 ⁷ *Chrysler Group’s 3.0-liter EcoDiesel V-6, 500e Battery-Electric Drive System Among Ward’s*
28 *10 Best Engines for 2014*, Chrysler Group LLC (FCA) (Dec. 12, 2013), http://www.fcanorthamerica.com/News/ChryslerDocuments/ChryslerGroupLLC_Sustain2013Dec12.pdf.

1 48. To convince these consumers, FCA expressly markets the Affected Vehicles as
2 EcoDiesel vehicles, with EPA certifications throughout the U.S., claiming as follows throughout its
3 advertising, specifications, and public-facing statements:

- 4 • “Thanks to advanced emissions-control technology ... [EcoDiesel’s] exhaust is ultra-
5 clean, making this engine available in all 50 states.”⁸
- 6 • “Equipped with a diesel oxidation catalyst, diesel particulate filter and selective
7 catalyst reduction, the EcoDiesel V6 engine will be emissions-compliant in all 50
8 states.”⁹
- 9 • “Chrysler Group engineers adapted the engine—manufactured by Fiat-owned V.M.
10 Motori—to meet the NAFTA region’s stringent emissions and on-board diagnostic
11 regulations. The new EcoDiesel V-6 is Tier 2/Bin 5 compliant.”¹⁰
- 12 • The emissions on the EcoDiesel engine data sheet meet Tier2 Bin5 requirements.¹¹

13 49. FCA further claims that “the Bosch emissions control system helps ensure that
14 virtually no particulates and minimal oxides of nitrogen (NOx) exit the tailpipe.”¹²

15 50. And FCA holds itself out as a protector of the environment: “We are in a race against
16 time. Climate change and the increasing scarcity of traditional sources of energy require new
17 approaches to mobility. Fiat Group is addressing this challenge head-on by ensuring individual
18 freedom of movement with maximum consideration for the environment and local communities.”¹³

19
20
21 ⁸ *Id.*

22 ⁹ *The 2014 Ram 1500 with EcoDiesel Engine, Available Soon at a Dealer Near You*, Ram Zone
(Ram trucks blog operated by FCA US LLC) (July 16, 2013), [https://blog.ramtrucks.com/features/
the-2014-ram-1500-with-ecodiesel-engine-available-soon-at-a-dealer-near-you/](https://blog.ramtrucks.com/features/the-2014-ram-1500-with-ecodiesel-engine-available-soon-at-a-dealer-near-you/).

23 ¹⁰ *Chrysler Group’s 3.0-liter EcoDiesel V-6, 500e Battery-Electric Drive System Among Ward’s*
10 Best Engines for 2014, Chrysler Group LLC (FCA) (Dec. 12, 2013), [http://www.fcanorth
america.com/News/ChryslerDocuments/ChryslerGroupLLC_Sustain2013Dec12.pdf](http://www.fcanorthamerica.com/News/ChryslerDocuments/ChryslerGroupLLC_Sustain2013Dec12.pdf).

24 ¹¹ Specification Sheet, available at [http://www.vmmotori.com/images/data_sheet/L630_DOHC-
NEW.pdf](http://www.vmmotori.com/images/data_sheet/L630_DOHC-NEW.pdf) (last accessed Nov. 30, 2016).

25 ¹² Dale Jewett, *EcoDiesel: An Essential Tool for Every Outdoorsman*, Objects in the Mirror...
(blog operated by FCA Digital Media) (May 22, 2015), [https://blog.fcanorthamerica.com/2015/05/
22/ecodiesel-an-essential-tool-for-every-outdoorsman/](https://blog.fcanorthamerica.com/2015/05/22/ecodiesel-an-essential-tool-for-every-outdoorsman/).

26 ¹³ Fiat Chrysler’s 2014 Sustainability Report at 4, available at [http://www.fcanorthamerica.com/
company/sustainability/Documents/Fiat%20Chrysler%20Sustainability%20Brochure%202014.pdf](http://www.fcanorthamerica.com/company/sustainability/Documents/Fiat%20Chrysler%20Sustainability%20Brochure%202014.pdf).

1 Step one, according to FCA is to “minimize environmental impacts related to the use of our
2 products.”

3 **D. FCA Advertised and Promoted EcoDiesel as Fuel Efficient**

4 51. FCA promises that the EcoDiesel vehicles provide greater fuel economy, “30% better
5 than a comparable gasoline engine.” According to FCA, “a Jeep Grand Cherokee or Ram 1500 with
6 the EcoDiesel V-6 has a driving range of about 730 miles on one tank of fuel. That’s more than
7 enough range to make the drive from Detroit to Traverse City and back without a refueling stop.”¹⁴

8 52. FCA’s website claims that “[t]he 3.0-liter V-6 EcoDiesel engine available on the Jeep
9 Grand Cherokee and Ram 1500 pickup has been listed among Ward’s “10 Best Engines” for three
10 consecutive years. On the Ram 1500, the engine delivers the highest fuel economy among all full-
11 size truck competitors – 12% higher than the next-closest competitor. On the Jeep Grand Cherokee,
12 it offers fuel economy of 30 miles per gallon highway with a driving range of more than 730
13 miles.”¹⁵

14 53. FCA further claims that the 2014 Ram 1500 “exceeds the EPA highway rating for the
15 top-ranked small pickup. The breakthrough results mean Ram keeps the half-ton fuel-economy
16 record set last year by the 2013 Ram 1500.”

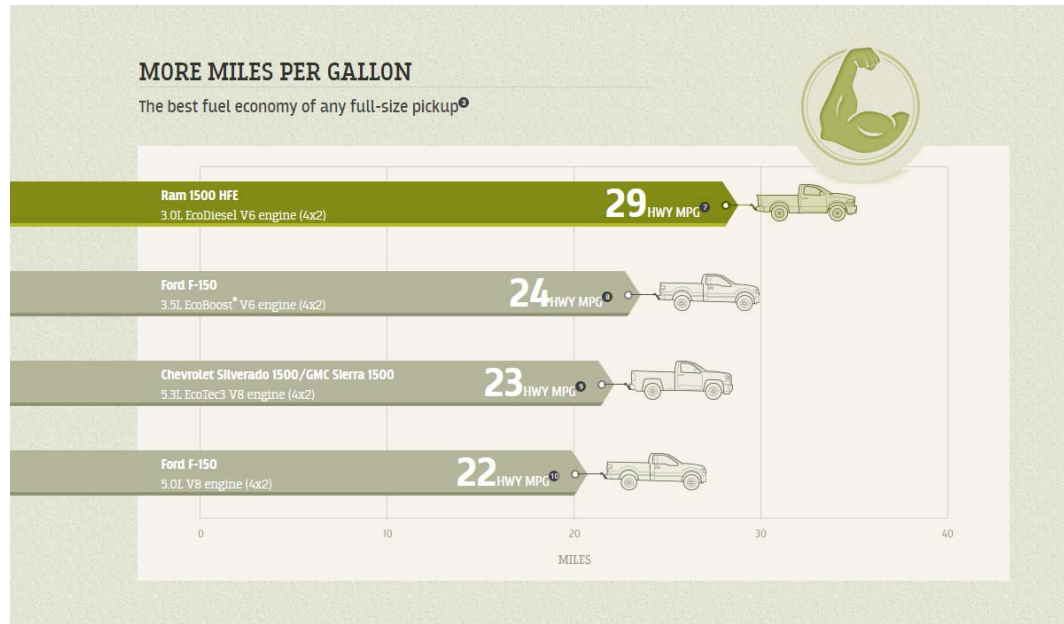
17 54. A chart on FCA’s website claims that Ram 1500 has the “best fuel economy of any
18 full-size pick-up:”¹⁶

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¹⁴ Dale Jewett, *EcoDiesel: An Essential Tool for Every Outdoorsman*, Objects in the Mirror...
25 (blog operated by FCA Digital Media) (May 22, 2015), <https://blog.fcanorthamerica.com/2015/05/22/ecodiesel-an-essential-tool-for-every-outdoorsman/>.

26
27
¹⁵ *Fuel Efficiency*, FCA US LLC, <http://www.fcanorthamerica.com/Innovation/Pages/Fuel-Efficiency2.aspx> (last accessed Nov. 30, 2016).

28
¹⁶ *EcoDiesel – Ram 1500 HFE*, Ram Trucks (FCA), <http://www.ramtrucks.com/en/ecodiesel/#> (last accessed Nov. 30, 2016).



55. And FCA offers prospective Ram 1500 buyers a calculator to determine how much money they can save with “fewer fill-ups day-by-day”:¹⁷

THE BEST FUEL ECONOMY

Simply put, a gallon of diesel lasts longer than a gallon of gas. With up to 29 highway mpg[®], that means fewer fill-ups day-by-day and serious savings in the long run.

CALCULATE YOUR SAVINGS

Enter your daily mileage to see how much you could save with the Ram 1500 HFE model with the 3.0L EcoDiesel V6 engine versus the Ford F-150 with the 3.5L EcoBoost V6 engine[®].

70 PER DAY

IN ONE YEAR, THAT'S 25,550 MILES

UP TO **\$268**

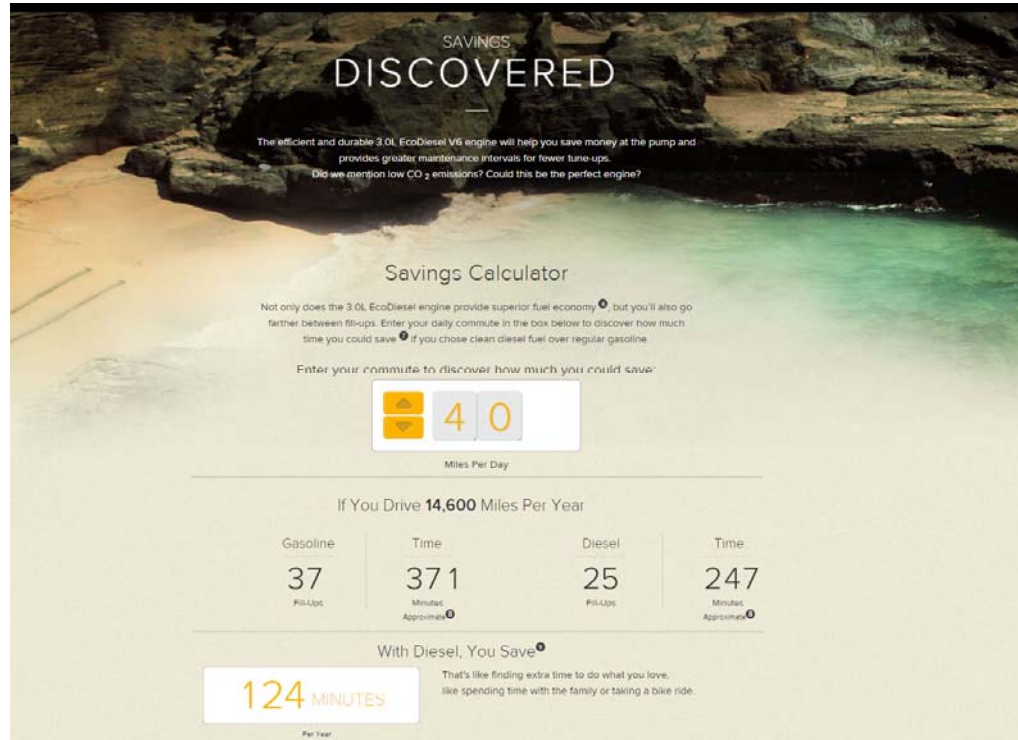
TOTAL ANNUAL SAVINGS[®]

56. FCA’s advertising has been effective. According to one press release, “[i]t’s every truck manufacturer’s dream to have this kind of initial order demand for a product. Fuel economy is

¹⁷ *Id.*

1 the No. 1 request of half-ton buyers and the Ram 1500 EcoDiesel delivers without compromising
2 capability.”¹⁸

3 57. FCA’s Jeep Grand Cherokee advertising is similarly deceptive, claiming that diesel
4 technology reduces the number of fill-ups:¹⁹



17 58. FCA further claims that the EcoDiesel fuel efficiency equips the Jeep Grand Cherokee
18 “with an incredible 730-mile highway driving range, you can find hundreds of miles of discovered
19 roads and be confident you’ll find your way back.”²⁰

20 59. Without cheating emissions, FCA could not achieve the fuel economy and range that
21 it promises. Moreover, when and if FCA recalls the Affected Vehicles and degrades the EcoDiesel
22 engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiff
23 and Class members will be required to spend additional sums on fuel and will not obtain the
24

25 ¹⁸ 2014 Ram 1500 EcoDiesel Orders Top More Than 8,000 Units in Three Days, Filling Initial
26 Allocation, Chrysler Group LLC (FCA) (Feb. 19, 2014), http://www.fcanorthamerica.com/News/ChryslerDocuments/ChryslerGroupLLC_Sustain2014Feb19.pdf.

27 ¹⁹ EcoDiesel, Jeep (FCA), <http://www.jeep.com/en/jeep-capabilities/eco-diesel-calculator/> (last
28 accessed Nov. 30, 2016).

²⁰ *Id.*

1 performance characteristics of their vehicles when purchased. And Affected Vehicles will
2 necessarily be worth less in the marketplace because of their decrease in performance and efficiency
3 and increased wear on their vehicles' engines.

4 **E. FCA Advertised and Promoted EcoDiesel as Powerful**

5 60. Another major concern for consumers of trucks and SUVs is power, including torque
6 and towing capacity. FCA claims that the 2015 Jeep Grand Cherokee equipped with a 3.0-liter
7 EcoDiesel V6 engine has best-in-class towing capability of up to 7,400 pounds.²¹

8 61. FCA also claims that the EcoDiesel engine has best-in-class torque: "The EcoDiesel
9 engine delivers best-in-class 420 lb-ft of torque. Paired with an impressive 240 horsepower, this
10 engine has serious muscle."²²

11 62. Without cheating emissions, FCA could not achieve the power and performance that
12 it boasts about. Moreover, when and if FCA recalls the Affected Vehicles and degrades the
13 EcoDiesel engine performance in order to make the Affected Vehicles compliant with EPA
14 standards, Plaintiff and Class members will be required to spend additional sums on fuel and will not
15 retain the towing capacity advertised. And Affected Vehicles will necessarily be worth less in the
16 marketplace because of their decrease in performance and increased wear on their vehicles' engine.

17 **F. Worldwide Diesel Emissions Cheating**

18 63. As noted, the world was shocked to learn that Volkswagen had manufactured over
19 11 million cars that were on the road in violation of European emissions standards, and over 480,000
20 vehicles were operating in the U.S. in violation of EPA and state standards. But Volkswagen was
21 not the only manufacturer of vehicles that exceeded emissions standards.

22 64. In the wake of a major scandal involving Volkswagen and Audi diesel vehicles
23 evading emissions standards with the help of certain software that manipulates emissions controls
24
25

26 ²¹ *Id.*

27 ²² *The 2014 Ram 1500 with EcoDiesel Engine, Available Soon at a Dealer Near You*, Ram Zone
28 (Ram trucks blog operated by FCA US LLC) (July 16, 2013), <https://blog.ramtrucks.com/features/the-2014-ram-1500-with-ecodiesel-engine-available-soon-at-a-dealer-near-you/>.

1 (called “defeat devices”),²³ scientific literature and reports and testing indicate that most of the diesel
 2 car manufactures of so called Clean Diesel vehicles emit far more pollution on the road than in lab
 3 tests. The EPA has widened its probe of auto emissions to include, for example, the Mercedes E250
 4 BlueTEC.

5 65. In May 2015, a study conducted on behalf of the Dutch Ministry of Infrastructure and
 6 the Environment found that all sixteen vehicles made by a variety of manufacturers, when tested,
 7 emitted significantly more NOx on real-world trips while they passed laboratory tests. The report
 8 concluded that “[i]n most circumstances arising in normal situations on the road, the system scarcely
 9 succeeded in any effective reduction of NOx emissions.”²⁴

10 66. The report further remarked:²⁵

11 It is remarkable that the NOx emission under real-world conditions
 12 exceeds the type approval value by [so much]. It demonstrates that the
 13 settings of the engine, the EGR and the SCR during a real-world test
 14 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.***

15 The lack of any “effective reduction of NOx emissions” is a complete contradiction of FCA’s claim
 16 that its vehicles are clean.

17 67. Other organizations are beginning to take notice of the emissions deception. The
 18 Transportation and Environment (T&E) organization, a European group aimed at promoting
 19 sustainable transportation, compiled data from “respected testing authorities around Europe.” T&E
 20 stated in September 2015 that real-world emissions testing showed drastic differences from
 21 laboratory tests such that models tested emitted more pollutants on the road than in their laboratory

22 ²³ EPA’s Sept. 18, 2015 Notice of Violation (“NOV”) to Volkswagen Group of America, Inc.
 23 available at <https://www.epa.gov/sites/production/files/2015-10/documents/vw-nov-caa-09-18-15.pdf>. As detailed in the NOV, software in Volkswagen and Audi diesel vehicles detects when the
 24 vehicle is undergoing official emissions testing and turns full emissions controls on only during the
 25 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 at the state testing station, but during
 normal operation they emit NOx at up to 40 times the standard allowed under U.S. laws and
 regulations. Volkswagen has admitted to installing a defeat device in its diesel vehicles.

26 ²⁴ *Detailed investigations and real-world emission performance of Euro 6 diesel passenger cars*,
 27 TNO (May 18, 2015), [http://publications.tno.nl/publication/34616868/a1Ug1a/TNO-2015-
 R10702.pdf](http://publications.tno.nl/publication/34616868/a1Ug1a/TNO-2015-R10702.pdf).

28 ²⁵ *Id.* at 6 (emphasis added).

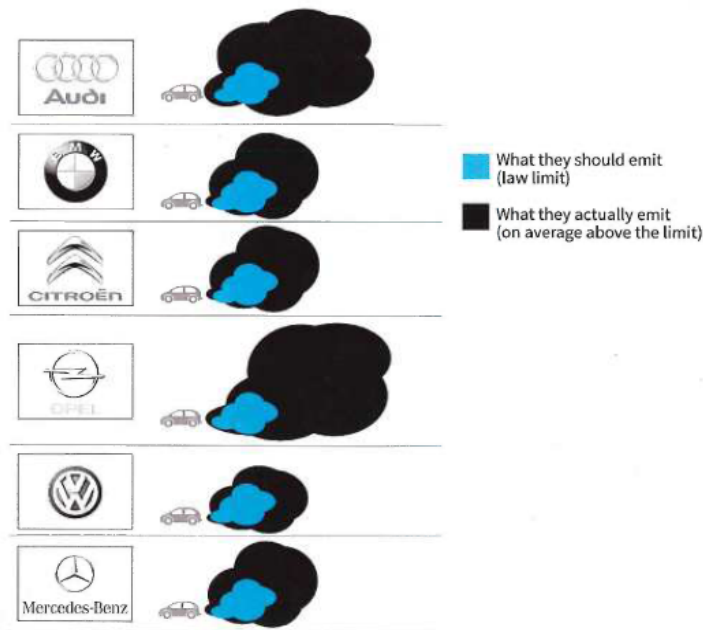
1 tests. “For virtually every new model that comes onto the market the gap between test and real-
 2 world performance leaps,” the report asserts.²⁶

3 68. In a summary report, T&E graphically depicted the widespread failure of most
 4 manufacturers:²⁷

5 **2. The problem is endemic across the car industry – but the**
 6 **performance of individual models and manufacturers varies**
 7 **widely**

8 In tests by the ICCT¹ 12 out of 13 modern diesel cars failed to achieve the Euro 6 limit in on the road. The
 9 worst vehicle, an Audi, emitted 22 times the allowed limit. Emissions are highest in urban areas where
 10 most people are exposed to the pollution. On average a new diesel car emits **over** 800mg/km of nitrogen
 11 oxides driving in town compared to the limit of 80mg/km. Data obtained on around 20 modern diesel cars
 12 by T&E shows every major manufacturer is selling cars that fail to meet Euro 6 limits on the road. A
 13 minority of vehicles do meet the limits – but most don’t. This is because the industry uses cheaper less
 14 effective exhaust treatment systems or fails to configure the best systems in a way that minimizes
 15 emissions. The cost of a modern diesel after treatment system is just €300.

16 **Above and beyond the safe limit**



22 Source: T&E

Transport & Environment

23 69. The T&E report found that the current system for testing cars in a laboratory produces
 24 “meaningless results.”²⁸

25
 26 ²⁶ *VW’s cheating is just the tip of the iceberg*, Transport & Environment (Sept. 21, 2015),
<http://www.transportenvironment.org/publications/vw%E2%80%99s-cheating-just-tip-iceberg>.

27 ²⁷ *Five facts about diesel the car industry would rather not tell you*, Transport & Environment
 28 (Sept. 2015), http://www.transportenvironment.org/sites/te/files/publications/2015_09_Five_facts_about_diesel_FINAL.pdf.

1 70. Emissions Analytics is a U.K. company which says that it was formed to “overcome
2 the challenge of finding accurate fuel consumption and emissions figures for road vehicles.” With
3 regard to its recent on-road emissions testing, the company explains:²⁹

4 [*I*]n the European market, we have found that real-world emissions of
5 the regulated nitrogen oxides are four times above the official level,
6 determined in the laboratory. Real-world emissions of carbon dioxide
7 are almost one-third above that suggested by official figures. For car
8 buyers, this means that fuel economy on average is one quarter worse
9 than advertised. This matters, even if no illegal activity is found.

10 **G. Defendants’ Dirty “Cheat Device” Scheme**

11 71. All modern engines are integrated with sophisticated computer components to manage
12 the vehicle’s operation, such as an electronic diesel control (“EDC”). Bosch tested, manufactured
13 and sold the EDC system used by Volkswagen, Mercedes, and FCA in the Affected Vehicles. This
14 system is more formally referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17”). Upon
15 its introduction, EDC Unit 17 was publicly-touted by Bosch as follows:³⁰

16 EDC17 ... controls every parameter that is important for effective,
17 low-emission combustion.

18 Because the computing power and functional scope of the new EDC17
19 can be adapted to match particular requirements, it can be used very
20 flexibly in any vehicle segment on all the world’s markets. In addition
21 to controlling the precise timing and quantity of injection, exhaust gas
22 recirculation, and manifold pressure regulation, it also offers a large
23 number of options such as the control of particulate filters or systems
24 for reducing nitrogen oxides. The Bosch EDC17 determines the
25 injection parameters for each cylinder, making specific adaptations if
26 necessary. This improves the precision of injection throughout the
27 vehicle’s entire service life. The system therefore makes an important
28 contribution to observing future exhaust gas emission limits.

72. Bosch worked with each vehicle manufacturer that utilized EDC Unit 17 to create a
unique set of specifications and software code to manage the vehicles’ engine operation.

²⁸ *Id.*

²⁹ Emissions Analytics Press Release (Sept. 28, 2015), available at <http://www.abvwc.com/home/emissions-analytics>.

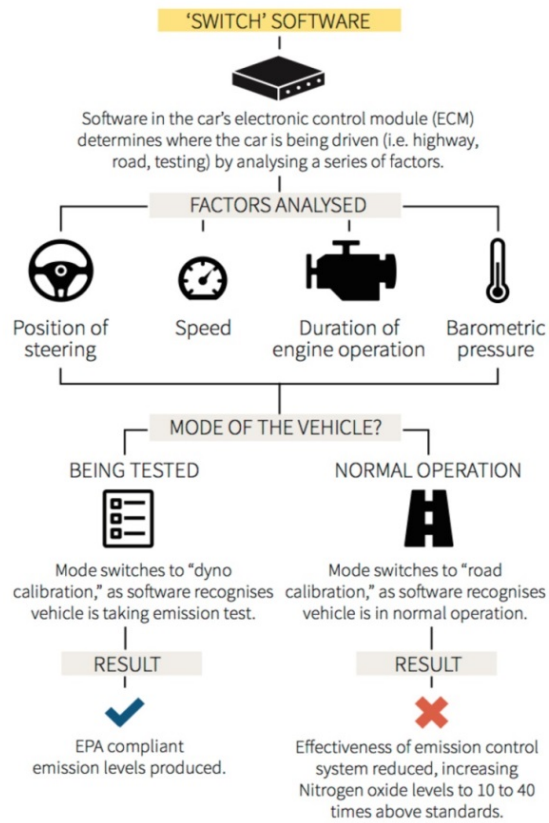
³⁰ See Bosch Press Release, *The brain of diesel injection: New Bosch EDC17 engine management system* (Feb. 28, 2006), <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>.

1 73. With respect to the Affected Vehicles, however, EDC Unit 17 was also enabled by
2 Bosch and FCA to surreptitiously evade emissions regulations. Bosch and FCA worked together to
3 develop and implement a specific set of software algorithms for implementation in the Affected
4 Vehicles, which enabled FCA to adjust fuel levels, exhaust gas recirculation, air pressure levels, and
5 even urea injection rates (for applicable vehicles).³¹ When carmakers test their vehicles against EPA
6 emission standards, they place their cars on dynamometers (large rollers) and then perform a series
7 of specific maneuvers prescribed by federal regulations. Bosch's EDC Unit 17 gave Volkswagen,
8 FCA, and other manufacturers the power to detect test scenarios by monitoring vehicle speed,
9 acceleration, engine operation, air pressure, and even the position of the steering wheel. When the
10 EDC Unit 17's detection algorithm detected that the vehicle was on a dynamometer (and undergoing
11 an emission test), additional software code within the EDC Unit 17 downgraded the engine's power
12 and performance and upgraded the emissions control systems' performance by switching to a "dyno
13 calibration" to cause a subsequent reduction in emissions to legal levels. Once the EDC Unit 17
14 detected that the emission test was complete, the EDC Unit would then enable a different "road
15 calibration" that caused the engine to return to full power while reducing the emissions control
16 systems' performance, and consequently caused the car to spew the full amount of illegal NOx
17 emissions out on the road.³² This process is illustrated in the following diagram, applicable to FCA
18 as well:

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26 ³¹ See, e.g., *Engine management*, Bosch Auto Parts, http://de.bosch-automotive.com/en/parts_and_accessories/motor_and_sytems/diesel/engine_management_2/engine_control_unit_1 (last
27 accessed Nov. 30, 2016).

28 ³² Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>.

How Volkswagen's defeat device works



Source: U.S. Environmental Protection Agency
J. Wang, 22/09/2015

REUTERS

74. This workaround was illegal. The Clean Air Act expressly prohibits defeat devices, defined as any auxiliary emission control device “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use.” 40 C.F.R. § 86.1803-01; *see also id.* § 86.1809-10 (“No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device.”). Moreover, the Clean Air Act prohibits the sale of components used as defeat devices, “where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3). Finally, in order to obtain a certificate of compliance (“COC”), automakers must submit an application, which lists all auxiliary emission control devices installed in the vehicle, a justification for each, and an explanation of why the control device is not a defeat device.

1 75. Thus, in order to obtain the COCs necessary to sell their vehicles, FCA did not
2 disclose, and affirmatively concealed, the presence of the test-detecting and performance-altering
3 software code that it developed with Bosch from government regulators, thus making that software
4 an illegal defeat device. In other words, FCA lied to the government, its customers, its dealers, and
5 the public at large.

6 76. Because the COCs were fraudulently obtained, and because the Affected Vehicles did
7 not conform “in all material respects” to the specifications provided in the COC applications, the
8 Affected Vehicles were never covered by a valid COC, and thus, were never legal for sale, nor were
9 they EPA and/or CARB compliant, as represented. FCA and Bosch hid these facts from the EPA,
10 other regulators, its dealers and consumers, and it continued to sell and lease the Affected Vehicles to
11 the driving public, despite their illegality, and with the complicity of Bosch.

12 77. FCA’s illegal workaround was enabled by its close partnership with Bosch, which
13 enjoyed a sizable portion of its annual revenue from manufacturing parts used in FCA’s and other
14 manufacturers’ diesel vehicles.³³ Bosch was well aware that FCA was using its emissions control
15 components as a defeat device and, in fact, worked with FCA to develop the software algorithm
16 specifically tailored for the Affected Vehicles.

17 78. Because the COCs were fraudulently obtained, the Affected Vehicles were never
18 covered by valid COCs, and thus, were never offered legally for sale. FCA hid these facts from the
19 EPA, CARB and other state regulators, and consumers, and it continued to sell and lease the
20 Affected Vehicles despite their illegality, and with the complicity of Bosch.

21 **H. Bosch Played a Critical Role in the Defeat Device Scheme**

22 79. Discovery of Bosch has just begun, but the evidence already proves that Bosch played
23 a critical role in the scheme to evade U.S. emissions requirements for diesel vehicles, including
24
25

26 ³³ Approximately 50,000 of Bosch’s 375,000 employees worked in the diesel technology
27 operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. *See*
28 *Bosch probes whether its staff helped VW’s emissions rigging*, *Automotive News* (Jan. 27, 2016),
<http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging>.

1 Volkswagen and FCA vehicles.³⁴ *In 2008, Bosch wrote Volkswagen and expressly demanded that*
 2 *Volkswagen indemnify Bosch for anticipated liability arising from the use of the Bosch-created*
 3 *“defeat device” (Bosch’s words), which Bosch knew was “prohibited pursuant to ... US Law.”*³⁵
 4 Volkswagen apparently refused to indemnify Bosch, but Bosch nevertheless continued to develop
 5 the so-called “akustikfunktion” (the code name used for the defeat device) for Volkswagen for
 6 another seven years. During that period, Bosch concealed the defeat device in communications with
 7 U.S. regulators once questions were raised about the emission control system in the Affected
 8 Vehicles, and went so far as to actively lobby lawmakers to promote Volkswagen’s “Clean Diesel”
 9 system in the U.S. Bosch’s efforts, taken together with evidence of Bosch’s actual knowledge that
 10 the “akustikfunktion” operated as an illegal defeat device, demonstrate that Bosch was a knowing
 11 and active participant in the decade-long illegal enterprise to defraud U.S. consumers.

12 80. Although this case is not about Volkswagen, Bosch’s history with Volkswagen
 13 provides background and support for its participation in the RICO enterprise alleged herein, of which
 14 Bosch and FCA were participants.

15 **1. Volkswagen and Bosch conspire to develop the illegal defeat device.**

16 81. Bosch tightly controlled development of the control units in the Affected Vehicles,
 17 and actively participated in the development of the defeat device.

18 82. As discussed above, Bosch introduced a new generation of diesel ECUs for
 19 Volkswagen. The development of the EDC17 was a massive undertaking, which began years before
 20 Volkswagen began its push into the U.S. market. At least twenty Bosch engineers were working
 21 full-time on writing the code for the EDC17 in the 2001 time frame. By 2004, long before the
 22 November 20, 2006 meeting at which Volkswagen apparently decided to use the defeat device to
 23 “pass” emission certification standards in the U.S., Bosch and Volkswagen had already entered into
 24 preliminary agreements for further development of the EDC17.³⁶

25 _____
 26 ³⁴ Plaintiff’s detailed and specific allegations against Bosch are based almost entirely on
 27 publicly-available documents, Plaintiff’s own research, and information produced by Volkswagen.

³⁵ VW-MDL2672-02570091 (English translation) (emphasis added).

28 ³⁶ See PowerPoint presentation at VW-MDL2672-02559528. This internal Volkswagen
 PowerPoint describes the “akustikfunktion” as activated in “recognition of emission related

1 83. A February 28, 2006 Bosch press release introduced the “New Bosch EDC17 engine
2 management system” as the “brain of diesel injection” which “controls every parameter that is
3 important for effective, low-emission combustion.” The EDC17 offered “[e]ffective control of
4 combustion” and a “[c]oncept tailored for all vehicle classes and markets.” In the press release,
5 Bosch touted the EDC17 as follows:³⁷

6 **EDC17: Ready for future demands**

7 Because the computing power and functional scope of the new EDC17
8 can be adapted to match particular requirements, it can be used very
9 flexibly in any vehicle segment on all the world’s markets. In addition
10 to controlling the precise timing and quantity of injection, exhaust gas
11 recirculation, and manifold pressure regulation, it also offers a large
12 number of options such as the control of particulate filters or systems
for reducing nitrogen oxides. The Bosch EDC17 determines the
injection parameters for each cylinder, making specific adaptations if
necessary. This improves the precision of injection throughout the
vehicle's entire service life. The system therefore makes an important
contribution to observing future exhaust gas emission limits.

13 84. Bosch’s EDC17 was the technology behind Volkswagen’s ambition. The EDC17 and
14 the development of its underlying software were integral to Volkswagen’s entire diesel strategy,
15 which by late 2006 included creating software to sense when the vehicles were in test mode and then
16 manipulate the emission control system at that time. This could not have been accomplished without
17 years of collaborative work with Bosch.

18 85. As early as February 2005, an internal feasibility study drafted by Ulrich Hackenberg
19 (Audi Development Chief) mentioned Bosch’s EDC17 as part of a strategy to reduce diesel vehicle
20 emissions of nitrogen oxides (“NOx”) by creating a change in engine electronics.³⁸ The study
21 discussed diesel strategies in the U.S. market in light of tightening U.S. emission standards. As
22 discussed above, shortly after the cheating scandal became public, Volkswagen suspended
23 Hackenberg, and he later resigned.³⁹

24 environment conditions” and proposed it as a solution to the “registration/certification [problem] in
the US.”

25 ³⁷ See Bosch press release, *The brain of diesel injection: New Bosch EDC17 engine management*
26 system (Feb. 28, 2006), <http://www.bosch-resse.de/presseforum/details.htm?txtID=2603&locale=en>.

27 ³⁸ VW-MDL2672-00744825.

28 ³⁹ Jack Ewing, *Audi Executive Resigns After Suspension over VW Emissions Scandal*, NY Times
(Dec. 4, 2015), <http://www.nytimes.com/2015/12/05/business/international/ulrich-hackenberg-suspended-over-volkswagen-emissions-scandal-resigns.html>.

1 86. Bosch made clear that the EDC17 was not one-size-fits-all. Instead, it was a
2 “[c]oncept tailored for all vehicle classes and markets” that could “be adapted to match particular
3 requirements [and] ... be used very flexibly in any vehicle segment on all the world’s markets.”
4 The EDC17 was tailored and adapted by modifying the sophisticated software embedded within the
5 electronic control unit (“ECU”). Bosch manufactured, developed, and provided the ECU and its
6 base of software to Volkswagen, Mercedes, FCA, and others.

7 87. Bosch and FCA worked together closely to modify the software, and to create
8 specifications for each vehicle model. Indeed, customizing a road-ready ECU is an intensive three-
9 to five-year endeavor involving a full-time Bosch presence at an automaker’s facility. Bosch and its
10 customers work so closely that Bosch purposefully locates its component part manufacturing
11 facilities close to its customers’ manufacturing plants.

12 88. All Bosch ECUs, including the EDC17, run on complex, highly proprietary engine
13 management software over which Bosch exerts near-total control. In fact, the software is typically
14 locked to prevent customers, like FCA, from making significant changes on their own. The defeat
15 device was just such a software change—one that would allow modifications to the vehicle’s
16 emission control to turn on only under certain circumstances—that FCA could not have made
17 without Bosch’s participation.

18 89. Bosch’s security measures further confirm that its customers cannot make significant
19 changes to Bosch software without Bosch involvement. Bosch boasts that its security modules
20 protect vehicle systems against unauthorized access in every operating phase, meaning that no
21 alteration could have been made without either a breach of that security—and no such claims have
22 been advanced—or Bosch’s knowing participation.⁴⁰

23 90. Unsurprisingly, then, at least one car company engineer has confirmed that Bosch
24 maintains absolute control over its software as part of its regular business practices:⁴¹

25 _____
26 ⁴⁰ *Reliable Protection for ECUs*, ESCRYPT (May 12, 2016), <https://www.escrypt.com/company/single-news/detail/reliable-protection-for-ecus/>.

27 ⁴¹ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
28 (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/>.

1 I've had many arguments with Bosch, and they certainly own the
2 dataset software and let their customers tune the curves. Before each
dataset is released it goes back to Bosch for its own validation.

3 Bosch is involved in all the development we ever do. They insist on
4 being present at all our physical tests and they log all their own data, so
someone somewhere at Bosch will have known what was going on.

5 All software routines have to go through the software verification of
6 Bosch, and they have hundreds of milestones of verification, that's the
structure

7 The car company is *never* entitled by Bosch to do something on their
8 own.

9 Thus, Bosch cannot convincingly argue that the development of the "akustik" device was the work of
10 a small group of rogue engineers.

11 91. In fact, Volkswagen's and Bosch's work on the EDC17 reflected a highly unusual
12 degree of coordination. It was a massive project that required the work of numerous Bosch coders
13 for a period of more than ten years, or perhaps more.⁴² Although Bosch publicly introduced the
14 EDC17 in 2006, it had started to develop the engine management system years before.⁴³

15 92. The size and complexity of the undertaking is captured by a spreadsheet that lists
16 entries for work done by Volkswagen and Bosch employees on the EDC17 from late 2003 to 2009.
17 Each entry is given one of six descriptors: enhancement, new feature, service, support, integration, or
18 bug/defect. In total, the spreadsheet contains 8,565 entries and lists hundreds of Bosch individuals.⁴⁴

19 93. The joint enterprise is also memorialized in a series of agreements between Bosch and
20 Volkswagen dating back to as early as mid-2005, reflecting negotiations that date prior to January
21 2005. On April 7, 2005, for example, Bosch GmbH's Ulrich Gralka and Dr. Holfelder executed the
22 "Framework Development Agreement for Software Sharing in EDC/MED17 Control Unit Projects
23 from the Robert Bosch (RB) Diesel Systems (DS) And Gasoline Systems (GS) Motor Vehicle

24 ⁴² Approximately 50,000 of Bosch's 375,000 employees worked in the diesel technology
25 operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. *See*
26 *Bosch Probes Whether Its Staff Helped VW's Emissions Rigging*, Automotive News (Jan. 27, 2016),
[http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-
helped-vws-emissions-rigging](http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging).

27 ⁴³ Bosch press release, *The brain of diesel injection: New Bosch EDC17 engine management*
28 *system* (Feb. 28, 2006), [http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&
locale=en](http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en).

⁴⁴ VW-MDL2672-02559780.

1 Units.” VWAG countersigned the agreement on September 26, 2005. Importantly, the agreement
2 defined software sharing as “the handing over of BOSCH software in the form of object code by
3 BOSCH to VW, so that VW can use this BOSCH software as a basis for developing VW modules
4 for specific EDC/ME(D)17 projects using software development environments from BOSCH.” The
5 agreement states that “[p]roviding the VW modules and integrating them to form a complete
6 software product requires close cooperation between the Parties.”

7 94. The contract also outlined responsibilities for software sharing and co-development.
8 Throughout development, the contract dictated Bosch was to retain control over the software. While
9 Bosch provided (and owned) the object code, and Volkswagen developed (and owned) the modules,
10 the parties agreed that “BOSCH carries out any modifications to the BOSCH software that are
11 necessary in order to integrate the intended VW modules at the expense of VW.” The agreement
12 further specifies that Bosch would monitor the software, test the implementation of Volkswagen
13 modules, and grant written approval to Volkswagen modules. Only if everything met Bosch’s
14 standards would it then “deliver[] the final complete software product for VW to use in combination
15 with a BOSCH control unit.”⁴⁵ Thus, Bosch needed to conduct extensive testing before delivering
16 the product to VW.

17 95. Yet another document demonstrates the tight grip that Bosch maintained over EDC17
18 software and any modifications made to it. On February 20, 2006, VWAG and Bosch (signed by
19 Bosch GmbH’s Dr. Steffen Berns, Senior Vice President of the Diesel Systems division), entered
20 into a supplemental agreement concerning the use of “expanded software” documentation for the
21 EDC17 and EDC16 (its predecessor).⁴⁶ Pursuant to this agreement, Bosch identified 35 named
22 individuals, affiliated with either VWAG or IAV (Ingenieurgesellschaft Auto und Verkehr), who
23 were granted access to expanded documentation for the EDC17 for specific functions relating to
24 emissions. Any changes to the list of persons to be given access required the explicit consent of
25 Bosch GmbH, and the access was temporary and non-transferable. Critically, the agreement stated
26 that “[t]his right of use shall not include the right to the change, modify or use the

27 ⁴⁵ Volkswagen produced an English translation of the agreement at VW-MDL2672-03752699.

28 ⁴⁶ Volkswagen produced an English translation of the agreement at VW-MDL2672-03752757.

1 DOCUMENTATION with third-party control units.”⁴⁷ Bosch thereby tightly controlled both who
2 could access the expanded documentation and the scope of their use of such materials.

3 96. A later agreement between Bosch GmbH and Volkswagen, this one from June 12,
4 2006, governed the implementation, integration, project management, and delivery of certain EDC
5 17 software functions for diesel vehicles that VWAG had requested from Bosch. This agreement,
6 too, made clear that any changes not explicitly detailed in the agreement would require further
7 approval from Bosch.

8 97. Along the same lines, several years later, in a February 5, 2011 agreement, Bosch
9 granted VWAG a license to further develop Bosch Denoxtronic functions for the treatment of
10 exhaust from diesel engines. Again, the contract is clear that Bosch maintains rights over the
11 Denoxtronic functions.

12 98. To recap, as the EA 189 project moved to series production in 2009, Bosch’s
13 documented role was to provide to Volkswagen executable software for installation in the EDC17
14 controller at the VW production line.⁴⁸ Bosch insisted that Bosch control the definition of the
15 EDC17 software, that Bosch test the software using bench top and vehicle testing, that Bosch
16 produce the final software release for series production, and that Bosch deliver the software to
17 Volkswagen for installation in the EA 189 engines used in the Affected Vehicles. Bosch’s firm
18 control over the development of and modifications to EDC17 is undeniable. It is inconceivable,
19 then, that Bosch did not know that the software it was responsible for defining, developing, testing,
20 maintaining and delivering contained an illegal defeat device.

21 99. In fact, Bosch was in on the secret and knew that Volkswagen was using Bosch’s
22 software algorithm as an “on/off” switch for emission controls when the Class Vehicle was
23 undergoing testing. As noted above, it has been said the decision to cheat was an “open secret” at
24 Volkswagen.⁴⁹ It was an “open secret” at Bosch as well.

25 _____
26 ⁴⁷ VW-MDL2672-03752757.

27 ⁴⁸ VW-MDL2672-03752699.

28 ⁴⁹ Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*,
Reuters (Jan. 23, 2016), [http://www.reuters.com/article/us-volkswagen-emissions-investigation-
idUSKCN0V02E7](http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7). See also Jay Ramey, *VW chairman Poetsch: Company ‘tolerated breaches of*

1 100. Volkswagen and Bosch personnel employed code language for the defeat device,
2 referring to it as the “acoustic function” (in German, “akustikfunktion”). As described above, the
3 roots of the “akustikfunktion”—and likely the cheating—can be traced back to the late 1990s when
4 Audi devised software called the “akustikfunktion” that could switch off certain functions when the
5 vehicle was in a test mode.⁵⁰ The “akustik” term is derived from the function’s ability to modify the
6 noise and vibration produced by the engine. News articles report that, in 2006, VWAG further
7 developed this “akustikfunktion” for the Affected Vehicles.⁵¹

8 101. Written communications between and within Bosch and Volkswagen describe the
9 “akustikfunktion” in surprising detail. In emails sent as early as July 2005 from VWAG’s Andreas
10 Specht to Bosch’s Kilian Bucher, Tobias Lang, Michael Moeker, and Carlos Alvarez, Specht
11 discussed emissions measurements from vehicles using the “akustikfunktion” in connection with
12 U.S. emission compliance.⁵² A February 2014 PowerPoint prepared by VWAG explained that the
13 akustikfunktion measured speed, acceleration, and engine operation to determine whether a vehicle is
14 undergoing testing.⁵³

15 102. On November 13, 2006, VWAG’s Dieter Mannigel (Software Design, U.S. Diesel
16 Engines, Drivetrain Electronics) circulated via email a PowerPoint presentation prepared for
17 VWAG’s Rudolf Krebs (who joined Volkswagen from Audi in 2005) about how the
18 “akustikfunktion” is activated and deactivated in recognition of emissions-related environmental

19 _____
20 *rules*’, Autoweek (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules> (it was necessary for the “EA 189 engine to pass U.S. diesel emissions limits within the budget and time frame allotted”).

21 ⁵⁰ Martin Murphy, *Dieselgate’s Roots Stretch Back to Audi*, Handelsblatt Global (Apr. 19, 2016),
22 <https://global.handelsblatt.com/edition/413/ressort/companies-markets/article/dieselgates-roots-stretch-back-to-audi?ref=MTI5ODU1>.

23 ⁵¹ *Volkswagen Probe Finds Manipulation Was Open Secret in Department: Newspaper*, Reuters
24 (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>. VW Group Chairman, Hans Dieter Poetsch, explained that a small group of
25 engineers and managers was involved in the creation of the manipulating software. See *VW
Chairman Poetsch: Company ‘Tolerated Breaches of Rules’*, Auto Week (Dec. 10, 2015),
26 <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules>. See also *Scandal Explained*, BBC (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>; Sept. 18, 2015, <http://www.autocar.co.uk/car-news/industry/vw-emissions-scandal-how-volkswagens-defeat-device-works>.

27 ⁵² VW-MDL2672-02559611.

28 ⁵³ VW-MDL2672-02572122.

1 conditions, such as temperature and pressure. The presentation explained that the existing vehicles
2 functioning with different drive cycles could not pass U.S. emission tests, and thus proposed the
3 release of the “akustikfunktion” to be driving dependent.⁵⁴

4 103. On November 20, 2006, Mannigel emailed his colleagues to summarize a meeting
5 with Krebs, at which the PowerPoint described above was likely presented. Krebs had emphasized
6 the importance of not getting caught by U.S. regulators using the “akustikfunktion,” and warned that
7 the function must be explainable to regulators. Krebs was skeptical about using the akustikfunktion
8 in the U.S. market due to potential regulatory and legal exposure, and Mannigel was nervous that
9 regulators would be able to detect the “akustikfunktion.” Nevertheless, Mannigel reported,
10 Volkswagen was going ahead with the expanded “akustikfunktion” with Bosch.⁵⁵ It is likely this
11 was the meeting at which VW decided to use the “akustikfunktion” as a defeat device to evade
12 compliance with U.S. emission requirements.

13 104. Well after the defeat device was developed and integrated into hundreds of thousands
14 of Affected Vehicles, Volkswagen and Bosch continued to work together to refine and maintain it.
15 For example, both Bosch and Volkswagen were involved in the calibration of the defeat devices for
16 the Affected Vehicles. A November 2014 email from VWAG’s Juergen Hintz, entitled
17 “Akustikfunktion,” relayed a telephone call with Bosch’s Kratt about the “akustikfunktion” and
18 Volkswagen’s role. VWAG’s C. Arenz responded that while he had been responsible for the
19 operation of the “akustikfunktion,” Bosch was responsible for its calibration. In fact, Arenz
20 disclosed that he planned to meet with Bosch (along with Michael Brand) about calibrating the
21 “akustikfunktion” the following week.⁵⁶ In another email, Hintz wrote that Bosch’s Kratt told him
22 that Bosch would be making certain changes to the “akustikfunktion” based on Volkswagen’s
23 specifications.⁵⁷

24 _____
25 ⁵⁴ VW-MDL2672-02559527. The email attached an internal Volkswagen PowerPoint that
26 describes the “akustikfunktion” as activated in recognition of emission related environment
conditions and proposed it as a solution to the registration emissions certification problems in the
U.S. VW-MDL2672-02559528.

27 ⁵⁵ VW-MDL2672-02559526.

28 ⁵⁶ VW-MDL2672-02569895.

⁵⁷ Translation at 00387135.

1 105. In sum, Bosch worked hand-in-glove with Volkswagen to develop and maintain the
2 akustikfunktion/defeat device.⁵⁸ On information and belief, it did so with FCA as well.

3 **2. Volkswagen and Bosch conspire to conceal the illegal “akustikfunktion”.**

4 106. By 2007, and likely earlier, Bosch was critical not only in developing the
5 “akustikfunktion,” but also in concealing it. On March 9, 2007, Bosch’s Guenther Berger emailed
6 VW AG’s Mathias Klaproth (a technical developer) and Mannigel with the subject of
7 “Erweiterungen Akustikfunktion” (in English, “Further Development of the Acoustic Function”).⁵⁹
8 ***Berger confirmed that Bosch would remove the description of the enhanced “akustikfunktion”***
9 ***from Volkswagen’s fuel pump specification sheets D2250 and D2278.*** Klaproth and Mannigel
10 agreed not to list the function in documentation in the U.S., but disagreed whether to disclose it in
11 Europe. Klaproth then took Berger off the email chain and insisted the “akustikfunktion” would be
12 applied to the European projects, to which Mannigel responded that he would contact Klaproth off-
13 line.

14 107. Bosch was concerned about getting caught participating in the defeat device fraud.
15 As reported in the German newspaper, *Bild am Sonntag*, and a French publication, a Volkswagen
16 internal inquiry found that in 2007, Bosch warned Volkswagen by letter that using the emissions-
17 altering software in production vehicles would constitute an “offense.”⁶⁰

18 108. Bosch expressed similar concerns that use of the defeat device it had created would
19 violate U.S. law. These concerns culminated in a June 2, 2008 letter from Bosch’s Dieter Schuetz to
20 Volkswagen’s Thorsten Schmidt in which Bosch demanded that Volkswagen indemnify Bosch for
21 any liability arising from the creation of a “defeat device,” as Bosch itself called it in English.

22 ⁵⁸ From the information available to date, it appears that at least nine individuals from Bosch
23 were involved in the scheme to develop the illegal defeat device: Bucher, Lang, Moeker, and
24 Alvarez (based on a July 2005 email from VWAG’s Specht); Berger (based on a March 2007 email
25 with VWAG’s Klaproth and Mannigel); Schuetz, Pfeifle, and Richardt (based on a June 2, 2008
letter attempting to limit Bosch’s liability); and Kratt (recipient of the letter attached to VWAG’s
June 6, 2008 response). VW-MDL2672-02570091; VW-MDL2672-02559611; VW-MDL2672-
02559515.

26 ⁵⁹ VW-MDL2672-02559515.

27 ⁶⁰ *Bosch warned VW about illegal software use in diesel cars, report says*, Automotive News
28 (Sept. 27, 2015), <http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>; *VW Scandal: Company Warned over Test Cheating Years Ago*, BBC (Sept. 27, 2015), <http://www.bbc.com/news/business-34373637>.

1 Through the letter, Bosch sought to clarify the roles and responsibilities of Volkswagen and Bosch
2 regarding the development of the EDC 17, and demanded that Volkswagen indemnify Bosch for any
3 legal exposure arising from work on the defeat device:⁶¹

4 The further development [of the EDC17] requested by your company
5 will result, in addition to the already existing possibility of activating
6 enriched data manually, *in an additional path for the potential to reset
7 data to act as a “defeat device.”* We ask you to have the attached
8 disclaimers executed by your company.

9 The letter uses the words “defeat device” in English, and further explained that “[t]he usage
10 of a defeat device is prohibited pursuant to ... US Law (CARB/EPA) (see definition footnote
11 2).”⁶²

12 109. Bosch’s June 2, 2008 letter also warned Volkswagen that the software modifications
13 Volkswagen requested could allow “the certified dataset [to be] replaced with another, possibly non-
14 certified data set[,]” which could, in turn, cause “the vehicle’s general operating license (registration)
15 [to] become void.”⁶³ Creating two data sets on emission compliance was illegal under U.S. law.
16 Bosch knew this, and that is why it requested indemnification from Volkswagen.

17 110. Helmut Pfeifle and Heike Richardt at Bosch signed the proposed indemnification; the
18 signature lines for Volkswagen were left blank. When Volkswagen’s Hermann Middendorf
19 responded to Alfred Kratt at Bosch. He did not deny the existence of a defeat device, but instead
20 attacked Bosch for involving “the lawyers.”

21 111. Discovery is ongoing, and Plaintiff does not have a full record of what unfolded in
22 response to Bosch’s June 2, 2008 letter. However, it is indisputable that Bosch continued to develop
23 and sell to Volkswagen hundreds of thousands of the defeat devices for U.S. vehicles following
24 Bosch’s express, written recognition that its software was being used in the Affected Vehicles as a
25 “defeat device” that was “prohibited pursuant to ... US Law.”

26 112. VWAG and Bosch continued over the next few years to refine the defeat device. This
27 was a lengthy and complicated process that required concealing its existence from the onboard

28 ⁶¹ VW-MDL2672-02570091 (English translation) (emphasis added).

⁶² *Id.* at 92 (emphasis added).

⁶³ *Id.* at 93.

1 diagnostic system, which was intended to report emission controls to comply with U.S., and
2 particularly California's, requirements. In a July 18, 2011 email, Audi's Olaf Busse proposed tying
3 the activation of the "akustikfunktion" more directly to steering angle, instead of vehicle
4 temperature, which was proving to be problematic. This request coincided with inquiries from
5 CARB about on-board diagnostics issues. VWAG's Hanno Jelden (Head of Powertrain Electronics),
6 worried that the change would be too obvious and could not be explained to regulators.⁶⁴

7 113. Denner and others were also in on the secret. Notes from a May 28, 2014 meeting
8 between Bosch and Volkswagen executives at VW headquarters reflect that the topic of
9 "akustikfunktion" was discussed in the context of Volkswagen's and Bosch's partnership in the U.S.
10 market. VWAG's Friedrich Eichler (Powertrain Development Chief) mentioned the importance of
11 the "akustikfunktion" in Bosch diesel engines. Bosch participants at the meeting included Denner, as
12 well as Rolf Bulander, Dirk Hoheisel, Markus Heyn, Scheider, Kampmann, Fetzer, Philipp,
13 Hammer, Mader, Hubner, Karakas, Schirm, and Frese. For VWAG, Winterkorn was also present.⁶⁵

14 **3. Volkswagen and Bosch conspire in the U.S. and Germany to elude U.S.**
15 **regulators who regulated not just Volkswagen diesels, but all diesels.**

16 114. The purpose of the defeat device was to evade stringent U.S. emissions standards.
17 Once Bosch and VW perfected the defeat device, therefore, their attention turned to deceiving U.S.
18 regulators.

19 115. Evidence already shows that Bosch GmbH employees expressly conspired with VW
20 to hide the function of the defeat device. Shortly after the March 2007 email exchange detailed
21 above, in which VWAG's Klapproth and Mannigel confirmed to Bosch GmbH's Berger that the
22 "akustikfunktion" would not be listed in the U.S. documentation for the Affected Vehicles, an
23 internal email from VWAG's Frank Alich (Development, OBD Diesel) to various individuals at
24 VWAG about scheduling a May 9, 2007 meeting, lamented the trouble distinguishing between
25

26
27 ⁶⁴ VW-MDL2672-0259489. Jelden was subsequently suspended in connection with the
emissions scandal.

28 ⁶⁵ VW-MDL2672-02569909.

1 acoustic and non-acoustic modes relating to soot simulation. Alich complained that he did not know
2 how he would explain the problem to CARB.⁶⁶

3 116. Bosch's North American subsidiary, Defendant Bosch LLC, was also part of and
4 essential to the fraud. Bosch LLC worked closely with Bosch GmbH and Volkswagen, in the United
5 States and in Germany, to ensure that the non-compliant Affected Vehicles passed U.S. emission
6 tests. As set forth below, Bosch LLC employees frequently communicated with U.S. regulators, and
7 actively worked to ensure the Affected Vehicles were approved by regulators.

8 117. Employees of Bosch LLC, Bosch GmbH, and IAV provided specific information to
9 U.S. regulators about how Volkswagen's vehicles functioned and unambiguously stated that the
10 vehicles met emissions standards. Bosch LLC regularly communicated to its colleagues and clients
11 in Germany about ways to deflect and diffuse questions from US regulators about the Affected
12 Vehicles—particularly CARB. For example, in a May 15, 2008 email from Audi AG's Martin
13 Hierse to Bosch GmbH's Markus Schroeder (Diesel Systems, Engineering Powertrain Diagnosis),
14 copying Audi's Stefan Forthmann, Hierse noted that auxiliary emission control devices ("AECDs")
15 were a very important subject for certification of U.S. diesels, and admitted discrepancies with the
16 U.S. authorities in AECD documentation.⁶⁷ The regulators' questions were chipping away at the
17 discrepancies between on board diagnostic systems, and the emission controls.

18 118. Accordingly, Hierse worried that there was a possibility that one of the Volkswagen
19 Group's representatives in the U.S. was providing the regulators too much information and data
20 concerning AECD disclosure. He then asked to discuss the matter with Bosch's Schroeder either by
21 telephone or in private at one of their offices due to the confidentiality of the issue.

22 119. Bosch and VW worked together to craft responses to CARB's questions. For
23 example, in an April 2009 email, Suanne Thomas (VW America Regulatory Strategist) and Bosch
24 LLC's Bernie Carr discussed results from tests sent from an individual at IAV showing defects in the
25 Affected Vehicles' in-use ratios and missing readiness information.

26
27

⁶⁶ VW-MDL2672-02555825.

28 ⁶⁷ VW-MDL2672-11873274.

1 120. On July 1, 2009, VWGoA's Thomas emailed colleagues, again raising concerns about
2 documenting AECDs in Model Year 2010–2011 Affected Vehicles to U.S. authorities. At issue was
3 the “low level of detail in the AECD documents [so that] ARB is not able to confirm which strategies
4 are for component protection.” Thomas then relayed that CARB asked whether there was a problem
5 getting Bosch to disclose its strategy.⁶⁸ In a related email, Thomas commented: “I was not involved
6 in the discussions ... with ARB on diesel, however I get the impression that there is a
7 misunderstanding at VW regarding AECDs. That this misunderstanding is the root of the issue –
8 why ARB is not satisfied with the AECD disclosure for diesels.”⁶⁹ CARB was asking the right
9 questions, and not getting honest answers.

10 121. Nor can Bosch persuasively distance Bosch GmbH from the communications with
11 regulators, as Bosch GmbH employees directly participated in meetings with CARB. For example,
12 in January 2015, Bosch GmbH (specifically, Bosch LLC's Adam Wiener, Senior Legal Counsel,
13 Dennis Froehlich, Quality Control, and Axel Boeringer, Sales Quality and Warranty) conferred about
14 setting up a conference call with Audi and CARB to explain problems with the diagnostics relating
15 to faulty fuel pumps, issues that likely arose because the defeat device was causing problems with
16 the onboard diagnostic system in certain Affected Vehicles. Suanne Thomas of VW coordinated the
17 call between Bosch and CARB.

18 122. Volkswagen and Bosch held CARB and the EPA at bay with finesse (and fraud) to
19 obtain the necessary COCs and EOs to keep Affected Vehicles on the road. In an August 2009 email
20 from VWGoA shared a comment from CARB regarding 2009 Volkswagen Jetta TDIs test results
21 that “VW ‘blatantly did the wrong thing’” and asking Volkswagen if this “is a base strategy from
22 Bosch.” Volkswagen responded, “yes.”⁷⁰

23 123. This is not the only document crediting Bosch strategies to obtain regulatory
24 approval. A May 17, 2011 email from CARB to Thomas regarding Volkswagen 2014 TDIs
25 referenced a 2010 conference call where they discussed “the bosch ZFC [Zero Fuel Calibration]

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27 ⁶⁸ VW-MDL2672-02469411.

⁶⁹ VW-MDL2672-02120937.

28 ⁷⁰ VW-MDL2672-00912096.

1 strategy and a possible fuel rail pressure disablement.” VWAG’s Alich then relayed that “ARB
 2 accepted our proposal to implement the ZFC ‘time to closed loop’ monitor with MY [model year]
 3 2013.”⁷¹ And in a May 31, 2013 email regarding 2.0-liter Affected Vehicles, Thomas referenced a
 4 “[p]roposed strategy” to “get the executive order [from CARB] based on the ‘Bosch’ strategy.”⁷²
 5 These communications demonstrate Bosch’s deep understanding of what regulators allowed and
 6 would not allow, and what Bosch did to help VW obtain approval.

7 124. In short, there can be no argument that Bosch left communications with the regulators
 8 to VW, or that Bosch did not understand the regulatory implications of the defeat device software
 9 VW paid Bosch to develop. Employees of Bosch GmbH and Bosch LLC worked together with VW
 10 to convince U.S. regulators to approve the Affected Vehicles for sale and use in this country. The
 11 examples below identify at least six additional instances in which Bosch communicated directly with
 12 U.S. regulators to discuss concerns with emissions detection and compliance in the Affected
 13 Vehicles. During each communication, Bosch LLC provided specific information about how
 14 Volkswagen’s vehicles functioned and unambiguously stated that the vehicles met emissions
 15 standards:

- 16 a. In December 2009, Bosch presented CARB with a strategy to
 17 allow usage of Injection Quantity Adjustment codes in 2013
 Volkswagen diesel models.⁷³
- 18 b. In or around December 2012, Volkswagen and Bosch
 19 submitted separate written responses, including requested
 20 documents, to the U.S. National Highway Traffic Safety
 Administration in response to its investigation into high-
 21 pressure fuel pump failures in certain Affected Vehicles.⁷⁴
- 22 c. A January 15, 2014 email from CARB to Thomas with the
 23 subject, “RE: VW response Re: V6TDI clarifications,”
 CARB’s Peter Ho referenced “previous discussions with
 24 Bosch,” and inquired about false detections in the field.⁷⁵
- 25 d. July 23, 2014 notes from Volkswagen referenced a phone call
 26 between Volkswagen, Bosch, CARB, and other automakers

25 ⁷¹ VW-MDL-2672-02464246.

26 ⁷² VW-MDL2672-00530556.

27 ⁷³ VW-MDL2672-07235955.

28 ⁷⁴ VW-MDL2672-00762181.

⁷⁵ VW-MDL2672-00465156 (emphasis added). These discussions began in 2011.

1 during which Bosch raised the issue of pin-pointing of wire
2 faults of NO_x and particulate matter sensors with a separate
control unit.⁷⁶

3 e. A February 9, 2015 email from VWAG's Steffen Vieser
4 relayed an update from Bosch GmbH about a discussion
5 between CARB and Bosch LLC's Wiener re: a "non-erasable
6 permanent fault code issue of the fuel pump electronic driver
stage diagnostic," which Volkswagen suggested could be fixed
by a "software update" requiring Bosch's assistance, which
CARB approved.⁷⁷

7 f. Notes from a June 10-11, 2015 meeting between CARB and
8 Volkswagen reference a "Bosch discussion with ARB
9 regarding PM [particulate matter] sensor introduction with Fe-
doping." The meeting notes also record that CARB told
10 Volkswagen that CARB did not want the emission monitors in
11 a "contrived condition."⁷⁸

12 125. Bosch did not disclose its knowledge of the illegal defeat device in any of these
13 meetings or communications with U.S. regulators, or disclose that its software enabled other
14 manufacturers to covertly exceed U.S. emissions standards.

15 **4. Bosch keeps Volkswagen's secret safe and pushes "clean" diesel in the U.S.**

16 126. Bosch not only kept Volkswagen's dirty secret safe, it went a step further and actively
17 lobbied lawmakers to push "Clean Diesel" in the U.S., including making Affected Vehicles available
18 for regulators to drive.

19 127. As early as 2004, Bosch announced a push to convince U.S. automakers that its diesel
20 technology could meet tougher 2007 U.S. emission standards.⁷⁹ Its efforts ended up being a
21 multiple-year, multi-million dollar effort, involving key players from both Bosch in Germany and
22 Bosch in the U.S. Following the launch of its new EDC systems in 2006, Bosch hired mcapitol
23 Managers, a lobbying firm to promote its "Clean Diesel" products on Capitol Hill and with the EPA.
24 In Washington, DC, mcapitol Managers lobbied on Bosch's behalf to defeat a proposal that would
25 have favored hybrid vehicle technology over "Clean Diesel" vehicles.

26 ⁷⁶ VW-MDL2672-00887996.

27 ⁷⁷ VW-MDL2672-00902633; VW-MDL2672-02449923.

28 ⁷⁸ VW-MDL2672-02296983.

⁷⁹ Edmund Chew, *Bosch boosts US diesel lobbying*, Autonews (Mar. 8, 2004), <http://www.auto-news.com/article/20040308/SUB/403080876/bosch-boosts-us-diesel-lobbying>.

1 128. Bosch also coordinated studies to advance diesel technology in the U.S. In September
2 2006, Bosch's Bill Rutecki reached out to Volkswagen and Audi to request their participation in the
3 "Martec Light Duty Diesel Market Opportunity Assessment." The study's goal was to develop
4 coordinated strategies to accelerate advancements of light duty diesel technology in the U.S.⁸⁰

5 129. Bosch's promotion of diesel technology specifically targeted the U.S. For example,
6 Bosch put on "Diesel Days in California," "Deer Conference: EGT Focus," and "SAE World
7 Congress in Detroit." In 2008, Bosch LLC and VW America co-sponsored the "Future Motion
8 Made in Germany-Second Symposium on Modern Drive Technologies" at the German Embassy in
9 Washington, D.C., with the aim of providing a venue for "stakeholders to gain insight into the latest
10 technology trends and engage in a vital dialogue with industry leaders and policymakers."⁸¹

11 130. Bosch LLC hosted multi-day conferences open to many regulators and legislators and
12 held private meetings with regulators, in which it proclaimed extensive knowledge of the specifics of
13 Volkswagen technology, including calibrations necessary for the Affected Vehicles to comply with
14 emissions regulations.

15 131. For example, in April 2009, Bosch organized and hosted a two-day "California Diesel
16 Days" event in Sacramento, California. Bosch invited a roster of lawmakers, journalists, executives,
17 regulators, and NGOs with the aim of changing perceptions of diesel from "dirty" to "clean." The
18 event featured Affected Vehicles as ambassadors of "Clean Diesel" technology, including a 2009
19 VW Jetta "green car." The stated goals were to "generat[e] a positive perception of Clean Diesel in
20 passenger vehicles" and to "educate California stakeholders about the immediate benefits [of] Clean
21 Diesel passenger vehicles" in reducing emissions. A key feature of the event included "Bosch
22 Vehicles Being Deployed."⁸² Attendees included Bernd Boisten (Bosch Regional President, Diesel
23 Systems, Bosch LLC); Dr. Joerg Reuger (Senior Vice President, Diesel Engineering, Bosch Support
24 Staff, Bosch GmbH); Brad Warner (Manager, Marketing, Diesel Systems, Robert Bosch LLC); and
25 Norman Johnson (Director, External Affairs, Robert Bosch LLC).

26 _____
27 ⁸⁰ VW-MDL2672-06136031.

⁸¹ VW-MDL2672-00234383.

28 ⁸² *Id.* at 115-45; VW-MDL2672-03331605.

1 132. In 2009, Bosch also became a founding member of the U.S. Coalition for Advanced
2 Diesel Cars. One of this advocacy group’s purposes included “generating awareness to legislators
3 and regulators on the benefits of “Clean Diesel” technology for passenger cars, through engagement
4 in policy, regulatory and advocacy activities.”

5 133. Another example of Bosch’s U.S. lobbying is the 2009 “California Green Summit.”
6 As part of its “Clean Diesel” partnership with Volkswagen, Bosch deployed two 2009 Jetta TDI
7 Volkswagens to attendees with the express purpose of “Influencing California,” and inviting CARB,
8 the Western Automotive Journalist Organization, and many others.

9 134. In September 2009, Bosch held a Diesel Technology Forum in California. Dirk
10 Naber (Diesel Systems/Engineering; Vehicle and Engine Laboratory of Bosch) attended, as did
11 VW’s Stuart Johnson, R. Dorenkamp and G. Pamio, along with Juergen Peter. Following this forum,
12 in October 2009, Mightycomm (Bosch’s California lobbyist) outlined a proposal for “OEM Vehicle
13 Placement Program targeting influential California NGOs and Regulators.”⁸³ This memo was
14 addressed to Bosch’s Lars Ulrich, Joerg Rueger, and Bosch Diesel Systems. **Mightycomm**
15 **specifically stated “[v]ehicles placed with CARB would have to be ... newer models that can**
16 **withstand possible dynamometer testing. While we do not anticipate a vehicle placed with CARB**
17 **would be inspected, examined, or tested on a dynamometer, there is no assurance some CARB**
18 **staff won’t want to do this.”**⁸⁴ On the other hand, Mightycomm advised not to worry about a vehicle
19 being tested by the California Energy Commission (“CEC”) “as the CEC is not equipped to conduct
20 such inspections.”⁸⁵

21 135. In 2010, Bosch sponsored the Virginia International Raceway with the support of the
22 2010 Volkswagen Jetta Cup Series. This included the 2009 “Sidewinder” which Bosch featured for
23 its “performance exhaust system.”

24 136. In its lobbying on behalf of “Clean Diesel,” Bosch had to continually cover up the
25 dirty secret of the defeat device in the Affected Vehicles. In a January 13, 2010 memo addressed to

26 ⁸³ VW-MDL2672-15182932

27 ⁸⁴ *Id.* (emphasis added).

28 ⁸⁵ *Id.*

1 Bosch's Lars Ullrich and Brad Warner, Mightycomm noted that "Clean Diesel has been ranked the
2 green car of the year" two years in a row—2009 and 2010. And yet Bosch knew the Affected
3 Vehicles could not obtain the results being advertised without activating the defeat device.

4 137. Bosch's Andreas Sambel (Director of Marketing and Business Excellence) presented
5 on "Clean Diesel" technology before the CEC on June 19, 2013, specifically pinpointing "key
6 influencers," such as specific NGOs that have not traditionally engaged CARB, "who we need to
7 reach, rally and motivate."⁸⁶

8 138. In its efforts to promote "Clean Diesel," including the Affected Vehicles, Bosch acted
9 on behalf of its global group. As an example, Bosch put on a two-day presentation on June 27-28,
10 2007, about meeting the demands of U.S. emission legislation, where it focused on lowering
11 emissions in diesel vehicles. Each of the presentation's 30 pages bears both the "Bosch" name and
12 "Bosch Engineering GmbH" but makes no mention of Bosch LLC.⁸⁷ The aforementioned memo
13 from Mightycomm was addressed to "Bosch Diesel Systems." And each page of the presentation for
14 California Diesel Days bears the label "BOSCH" in emboldened red type.⁸⁸ This is consistent with
15 the ongoing representations that the Bosch entities, overseas and in the U.S. were "one-for-all-and-
16 all-for-one" in promoting "Clean Diesel" technology to U.S. stakeholders.

17 **I. The Deception Involving FCA's "EcoDiesels"**

18 139. Plaintiff has tested the 2015 Dodge Ram 1500 pickup using a Portable Emissions
19 Measurement System ("PEMS"). Testing revealed that the Ram 1500 fails to meet U.S. emissions
20 standards, as promised, and fails to meet the "no NOx" out of the tailpipe promise.

21 140. The applicable standard both at the federal and state level is 50 mg/mile of NOx for
22 "FTP Style" driving—*i.e.*, city driving. Testing was conducted with a PEMS unit to simulate driving
23 conditions under both the FTP certification cycle and the highway certification cycle. The Ram 1500
24 emits an average of 159 mg/mile of NOx and a maximum of 1,283 mg/mile on flat roads, and 222
25 mg/mile of NOx with a maximum of 1,859 mg/mile on hills. For highway driving, the average was

26 ⁸⁶ VW-MDL2672-00885348.

27 ⁸⁷ VW-MDL2672-05676990.

28 ⁸⁸ VW-MDL2672-03331605.

1 232 mg/mile and a maximum of 1,615 mg/mile, compared to the 70 mg/mile standard. On hills, the
2 numbers are 353 mg/mile and 3,240 mg/mile. Testing also revealed a defeat device triggered by
3 ambient temperature that significantly derates the performance of the NOx emission reduction
4 system, with ambient threshold temperatures above approximately 95°F and below 40–50°F. The
5 resulting NOx emissions increase by a factor of 10 when above or below these threshold
6 temperatures. Testing also revealed the presence of a defeat device when ascending hills, as the
7 emissions control system appears to be significantly derated after a short period of steady driving on
8 hills. As a result, NOx emissions increase after about 500–1000 seconds on hills with grades as low
9 as 1%, where emissions are often 10 times the standard. For grades as little as 0.4%, emissions were
10 found to be as high as 6 times the highway standard.

11 141. The Dodge Ram 1500 emissions software is a “Bosch EDC17,” as is the Grand
12 Cherokee. The same basic emissions system is in the Grand Cherokee EcoDiesel and the engines are
13 identical.

14 142. Although the Dodge Ram 2500 and 3500 are built with a different engine design,
15 these models also fail to meet emissions standards, and such failure adds to the plausibility of FCA’s
16 deception with respect to the Ram 1500.

17 143. Testing was performed on a 2012 Dodge Ram 2500 powered by a Cummins 6.7 diesel
18 engine using a PEMS. The vehicle had accumulated approximately 70,000 miles at the time of
19 testing. The results show that the vehicle does not meet the relevant emission standards, as follows:
20 During on-road testing designed to simulate the driving profile of the Federal Test Procedure (FTP)
21 certification cycle, emissions were found to be 702 mg/mile on average, 3.5 times the federal and
22 California standard of 200 mg/mile. Over significant distances, emissions were found to be as high
23 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
24 times the relevant standard. During on-road PEMS testing designed to simulate the driving profile of
25 the highway certification cycle, average emissions were found to be 756 mg/mile, or 1.9 times the
26 California (and Section 177 state) standard. Over significant distances, emissions were found to be
27 as high as 1,200 to 2,250 mg/mile for periods lasting as long as 16% of the total drive time. That
28 equates to 3.0 to 5.6 times the relevant standard.

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

3 145. These facts puts the lie to FCA’s claims that EcoDiesel is a “clean diesel” with
4 “ultralow emissions,” or that “no NOx” is emitted through the tailpipe. FCA misrepresents the
5 emissions performance of its vehicles equipped with EcoDiesel engines because the Affected
6 Vehicles spew NOx into the air at levels that far exceed U.S. emissions standards.

7 **J. The Damage**

8 146. FCA will not be able to make the Affected Vehicles comply with emissions standards
9 without substantially degrading their performance characteristics, including their horsepower and
10 efficiency. As a result, even if FCA is able to make the Affected Vehicles EPA-compliant, Plaintiff
11 and Class members will nonetheless suffer actual harm and damages because their vehicles will no
12 longer perform as they did when purchased and as advertised. This will necessarily result in a
13 diminution in value of every Affected Vehicle, and it will cause owners of Affected Vehicles to pay
14 more for fuel while using their Affected Vehicles.

15 147. As a result of FCA’s unfair, deceptive, and/or fraudulent business practices, and its
16 failure to disclose that under normal operating conditions the Affected Vehicles are not “clean”
17 diesels and emit more pollutants than permitted under federal and state laws, owners and/or lessees
18 of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiff and Class
19 members known of the higher emissions at the time they purchased or leased their Affected Vehicles,
20 they would not have purchased or leased those vehicles, or would have paid substantially less for the
21 vehicles than they did. Moreover, when and if FCA recalls the Affected Vehicles and degrades the
22 EcoDiesel Clean Diesel engine performance in order to make the Affected Vehicles compliant with
23 EPA standards, Plaintiff and Class members will be required to spend additional sums on fuel and
24 will not obtain the performance characteristics of their vehicles when purchased. Moreover,
25 Affected Vehicles will necessarily be worth less in the marketplace because of their decrease in
26 performance and efficiency and increased wear on their vehicles’ engines.

1 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

2 **A. Discovery Rule Tolling**

3 148. Class members had no way of knowing about FCA’s deception with respect to the
4 unlawfully high emissions of its EcoDiesel Clean Diesel engine system in Affected Vehicles. To be
5 sure, FCA continues to market the Affected Vehicles as “clean” diesels and also continues to claim
6 that Affected Vehicles comply with EPA emissions standards.

7 149. Within the time period of any applicable statutes of limitation, Plaintiff and members
8 of the proposed classes could not have discovered through the exercise of reasonable diligence that
9 FCA was concealing the conduct complained of herein and misrepresenting FCA’s true position with
10 respect to the emission qualities of the Affected Vehicles.

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

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

20 **B. Fraudulent Concealment Tolling**

21 152. All applicable statutes of limitation have also been tolled by FCA’s knowing and
22 active fraudulent concealment and denial of the facts alleged herein throughout the time period
23 relevant to this action.

24 153. Instead of disclosing its emissions scheme, or that the quality and quantity of
25 emissions from the Affected Vehicles were far worse than represented, and of its disregard of federal
26 and state law, FCA falsely represented that the Affected Vehicles complied with federal and state
27 emissions standards, that the diesel engines were “clean,” and that it was a reputable manufacturer
28 whose representations could be trusted.

1 **C. Estoppel**

2 154. FCA was under a continuous duty to disclose to Plaintiff and Class members the true
3 character, quality, and nature of emissions from the Affected Vehicles, and of those vehicles'
4 emissions systems, and of the compliance of those systems with applicable federal and state law.

5 155. FCA knowingly, affirmatively, and actively concealed or recklessly disregarded the
6 true nature, quality, and character of the emissions systems, and the emissions, of the Affected
7 Vehicles.

8 156. FCA was also under a continuous duty to disclose to Plaintiff and Class members that
9 it had engaged in the conduct complained of herein contrary to federal and state emissions and clean
10 air standards, and that it systematically devalued compliance with federal and state law regulating
11 vehicle emissions and clean air.

12 157. Based on the foregoing, FCA is estopped from relying on any statutes of limitations in
13 defense of this action.

14 **VII. CLASS ALLEGATIONS**

15 158. Plaintiff brings this action on behalf of himself and as a class action, pursuant to the
16 provisions of Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the
17 following class and subclasses (collectively, the "Classes"):

18 **Nationwide RICO Class**

19 All persons or entities in the United States who owned or leased an "Affected
20 Vehicle." Affected Vehicles include, without limitation, the diesel-powered
21 2014–2016 Jeep Grand Cherokee EcoDiesel, and the diesel-powered 2014–2016
22 Dodge Ram EcoDiesel.

22 **California Class**

23 All persons or entities in California who owned or leased an "Affected Vehicle."
24 Affected Vehicles include, without limitation, the diesel-powered 2014–2016 Jeep
25 Grand Cherokee EcoDiesel, and the diesel-powered 2014–2016 Dodge Ram
26 EcoDiesel.

25 **The Multistate Class**

26 All persons who purchased an Affected Vehicle in the following states: Alabama,
27 Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida,
28 Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana,
Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri,
Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New

1 York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania,
2 Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont,
3 Virginia, Washington, West Virginia, Wisconsin, and District of Columbia.
4 Affected Vehicles include, without limitation, the diesel-powered 2014–2016 Jeep
5 Grand Cherokee EcoDiesel, and the diesel-powered 2014–2016 Dodge Ram
6 EcoDiesel.

7
8 159. Excluded from the Classes are individuals who have personal injury claims resulting
9 from the unlawfully high emissions in the EcoDiesel system of Affected Vehicles. Also excluded
10 from the Classes are FCA and its subsidiaries and affiliates; all persons who make a timely election
11 to be excluded from the Classes; governmental entities; and the Judge to whom this case is assigned
12 and his/her immediate family. Plaintiff reserves the right to revise the Class definitions based upon
13 information learned through discovery.

14 160. Certification of Plaintiff's claims for classwide treatment is appropriate because
15 Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as would
16 be used to prove those elements in individual actions alleging the same claim.

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

19 162. **Numerosity**. Federal Rule of Civil Procedure 23(a)(1): The members of the Classes
20 are so numerous and geographically dispersed that individual joinder of all Class members is
21 impracticable. While Plaintiff is informed and believes that there are at least 140,000 owners of
22 Dodge Ram 1500s and tens of thousands of owners of Grand Cherokees, the precise number of Class
23 members is unknown to Plaintiff, but may be ascertained from FCA's books and records. Class
24 members may be notified of the pendency of this action by recognized, Court-approved notice
25 dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or
26 published notice.

27 163. **Commonality and Predominance**: Federal Rule of Civil Procedure 23(a)(2) and
28 23(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 FCA and Bosch engaged in the conduct alleged herein;

- 1 b. Whether FCA designed, advertised, marketed, distributed, leased,
2 sold, or otherwise placed Affected Vehicles into the stream of
commerce in the United States;
- 3 c. Whether the EcoDiesel Clean Diesel engine system in the Affected
4 Vehicles contains a defect in that it does not comply with U.S.
EPA requirements and federal and state emissions regulations;
- 5 d. Whether the EcoDiesel Clean Diesel engine system in Affected
6 Vehicles can be made to comply with EPA and state standards
without substantially degrading the performance and/or efficiency
7 of the Affected Vehicles;
- 8 e. Whether FCA and Bosch knew about the defeat device and, if so,
how long FCA has known;
- 9 f. Whether Bosch designed and manufactured a defeat device;
- 10 g. Whether Bosch supplied the defeat device to FCA with the
11 knowledge that FCA would use it in production of Affected
Vehicles;
- 12 h. Whether Bosch acted in concert with FCA and aided and abetted
FCA's fraud;
- 13 i. Whether FCA marketed, and distributed Affected Vehicles with a
14 defeat device;
- 15 j. Whether FCA's and Bosch's conduct violates RICO and other
16 laws as asserted herein;
- 17 k. Whether FCA's and Bosch's conduct violates consumer protection
statutes and false advertising laws;
- 18 l. Whether Plaintiff and the other Class members are entitled to
19 equitable relief, including, but not limited to, restitution or
injunctive relief; and
- 20 m. Whether FCA designed, advertised, marketed, distributed, leased,
21 sold, or otherwise placed Affected Vehicles into the stream of
commerce in the U.S.;
- 22 n. Whether the EcoDiesel Clean Diesel engine system in the Affected
23 Vehicles emits pollutants at levels that do not make them "clean"
diesels and that do not comply with EPA requirements;
- 24 o. Whether the EcoDiesel Clean Diesel engine system in Affected
25 Vehicles can be made to comply with EPA standards without
substantially degrading the performance and/or efficiency of the
26 Affected Vehicles;
- 27 p. Whether FCA knew about the unlawfully high emissions and, if so,
how long FCA has known;
- 28

- 1 q. Whether FCA designed, manufactured, marketed, and distributed
- 2 Affected Vehicles with defective or otherwise inadequate emission
- 3 controls;
- 4 r. Whether Plaintiff and the other Class members overpaid for their
- 5 Affected Vehicles;
- 6 s. Whether Plaintiff and the other Class members are entitled to
- 7 equitable relief, including, but not limited to, restitution or
- 8 injunctive relief; and
- 9 t. Whether Plaintiff and the other Class members are entitled to
- 10 damages and other monetary relief and, if so, in what amount.

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

14 165. **Adequacy:** Federal Rule of Civil Procedure 23(a)(4): Plaintiff is an adequate Class
15 representative because his interests do not conflict with the interests of the other members of the
16 Classes he seeks to represent; Plaintiff has retained counsel competent and experienced in complex
17 class action litigation; and Plaintiff intends to prosecute this action vigorously. The Class members'
18 interests will be fairly and adequately protected by Plaintiff and his counsel.

19 166. **Declaratory and Injunctive Relief:** Federal Rule of Civil Procedure 23(b)(2):
20 Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the other
21 members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as
22 described below, with respect to each Class as a whole.

23 167. **Superiority:** Federal Rule of Civil Procedure 23(b)(3): A class action is superior to
24 any other available means for the fair and efficient adjudication of this controversy, and no unusual
25 difficulties are likely to be encountered in the management of this class action. The damages or
26 other financial detriment suffered by Plaintiff and the other Class members are relatively small
27 compared to the burden and expense that would be required to individually litigate their claims
28 against Defendants, so it would be impracticable for the members of the Classes to individually seek
redress for 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

1 contrast, the class action device presents far fewer management difficulties, and provides the benefits
2 of single adjudication, economy of scale, and comprehensive supervision by a single court.

3 **VIII. CLAIMS**

4 **A. Claims Brought on Behalf of the Nationwide RICO Class**

5 **COUNT I**
6 **VIOLATIONS OF RACKETEER INFLUENCED AND**
7 **CORRUPT ORGANIZATIONS ACT (RICO)**
8 **VIOLATION OF 18 U.S.C. § 1962(C) - (D)**

9 168. Plaintiff incorporates by reference each preceding and succeeding paragraph as
10 though fully set forth herein.

11 169. Plaintiff brings this Count individually and on behalf of the Nationwide RICO Class
12 against Defendants FCA, Robert Bosch GmbH, and Robert Bosch LLC (collectively, “RICO
13 Defendants”).

14 170. The RICO Defendants are all “persons” under 18 U.S.C. § 1961(3) because they are
15 capable of holding, and do hold, “a legal or beneficial interest in property.”

16 171. Section 1962(c) makes it “unlawful for any person employed by or associated with
17 any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to
18 conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a
19 pattern of racketeering activity.” Section 1962(d), in turn, makes it unlawful for “any person to
20 conspire to violate.”

21 172. For many years now, the RICO Defendants have aggressively sought to increase the
22 sales of Affected Vehicles in an effort to bolster revenue, augment profits and increase FCA’s share
23 of the diesel vehicle market. Finding it impossible to achieve their goals lawfully, however, the
24 RICO Defendants resorted instead to orchestrating a fraudulent scheme and conspiracy. In
25 particular, the RICO Defendants, along with other entities and individuals, created and/or
26 participated in the affairs of an illegal enterprise (“Emissions Fraud Enterprise”) whose direct
27 purpose was to deceive the regulators and the public into believing the Affected Vehicles were
28 “clean” and “environmentally friendly.” As explained in greater detail below, the RICO Defendants’
acts in furtherance of the Emissions Fraud Enterprise violate § 1962(c) and (d).

1 **1. The Members of the Emissions Fraud Enterprise**

2 173. Upon information and belief, the Emissions Fraud Enterprise consisted of the
3 following entities and individuals: FCA, Robert Bosch GmbH, and Robert Bosch LLC.

4 174. Robert Bosch GmbH and Robert Bosch LLC (together, “Bosch” or “Bosch
5 Defendants”) tested, manufactured, and sold the electronic control module (“ECM”) that managed
6 the emissions control system used by FCA in the Affected Vehicles. This particular ECM is more
7 formally referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17”).⁸⁹

8 175. Defendant Bosch GmbH is a multinational engineering and electronics company
9 headquartered in Gerlingen, Germany, which has hundreds of subsidiaries and companies. It wholly
10 owns defendant Bosch LLC, a Delaware limited liability company headquartered in Farmington
11 Hills, Michigan. As explained above, Bosch’s sectors and divisions are grouped by subject matter,
12 not location. The Mobility Solutions (formerly Automotive Technology) is the Bosch sector at issue,
13 particularly its Diesel Services division, and it encompasses employees of Bosch GmbH and Bosch
14 LLC. These individuals were responsible for the design, manufacture, development, customization,
15 and supply of the defeat device to FCA for use in the Affected Vehicles.

16 176. Bosch worked with FCA, Volkswagen, and Mercedes to develop and implement a
17 specific and unique set of software algorithms to surreptitiously evade emissions regulations. Bosch
18 customized their EDC Unit 17s for installation in the Affected Vehicles with unique software code to
19 detect when it was undergoing emissions testing, as described above, and did so for other vehicles
20 with defeat devices in Volkswagen and Mercedes vehicles.⁹⁰

21 177. Bosch’s conduct with respect to Volkswagen, outlined below, adds plausibility to its
22 participation in the enterprise herein. For example, Bosch was well aware that the EDC Unit 17
23 would be used by Volkswagen to cheat on emissions testing. As described above, on June 2, 2008,
24 Bosch’s Dieter Schütz wrote to his counterparts at Volkswagen, seeking legal indemnification from
25

26 ⁸⁹ http://www.bosch-presse.de/presseforum/details.htm?txtID=7421&tk_id=108.

27 ⁹⁰ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
28 (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

1 Volkswagen for the “expanded use” of the EDC Unit 17s which it called a “defeat device.”⁹¹ Schütz
2 explained that “[t]he usage of a defeat device is prohibited pursuant to ... US Law (CARB/EPA) (see
3 definition footnote 2),”⁹² and warned that the agreed-to software modifications would allow “the
4 certified dataset [to be] replaced with another, possibly non-certified data set,” which could cause
5 “the vehicle’s general operating license (registration) [to] become void.”⁹³ Volkswagen rebuffed
6 Bosch’s request, yet Bosch nonetheless shipped the modified software to Volkswagen for use in the
7 Affected Vehicles for another seven years. Bosch was also critical to the concealment of the defeat
8 device in communications with U.S. regulators and went even further to actively lobby U.S.
9 lawmakers on behalf of Volkswagen and its “Clean Diesel” vehicles.

10 178. EDC Unit 17 could not effectively lower NO_x emissions to legal levels during normal
11 operating conditions. In order to pass the emissions test, then, EDC Unit 17 is equipped with a
12 “defeat device,” which is software that allows the vehicle to determine whether it is being operated
13 under normal conditions or testing conditions.

14 179. As was publicly reported, the Bosch Defendants, seeking to conceal their involvement
15 in the unlawful Emissions Fraud Enterprise, sent a letter to Volkswagen AG in 2007 stating that
16 Volkswagen Diesels *could not be lawfully operated* if the LNT or SCR after-treatment system was
17 disabled.⁹⁴ The exact same logic applies to the FCA Affected Vehicles.

18 180. Indeed, notwithstanding their knowledge that the Volkswagen Diesels *could not be*
19 *lawfully operated* if the emissions system was disabled, the Bosch Defendants, driven to cement their
20 position as a leading supplier of diesel emissions equipment, went on to sell approximately *eleven*
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22
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24

25 ⁹¹ VW-MDL2672-02570091 (English translation).

26 ⁹² *Id.* at 92.

27 ⁹³ *Id.* at 93.

28 ⁹⁴ Stef Shrader, *Feds Are Now Investigating Volkswagen Supplier Bosch Over Dieselgate*,
Jalopnik (Nov. 19, 2015), <http://jalopnik.com/feds-are-now-investigating-volkswagen-supplier-bosch-ov-1743624448>.

1 million EDC Unit 17s to Volkswagen over an eight year period, and hundreds of thousands of FCA
2 Affected Vehicles.⁹⁵

3 181. The persons and entities described in the preceding section are members of and
4 constitute an “association-in-fact” enterprise.

5 182. At all relevant times, the Emissions Fraud Enterprise: (a) had an existence separate
6 and distinct from each Defendant; (b) was separate and distinct from the pattern of racketeering in
7 which the RICO Defendants engaged; and (c) was an ongoing organization consisting of legal
8 entities, including the FCA Defendants, the Bosch Defendants, and other entities and individuals
9 associated for the common purpose of designing, manufacturing, distributing, testing, and selling the
10 Affected Vehicles through fraudulent COCs and EOs, false emissions tests, deceptive and misleading
11 marketing and materials, and deriving profits and revenues from those activities. Each member of
12 the Emissions Fraud Enterprise shared in the bounty generated by the enterprise, *i.e.*, by sharing the
13 benefit derived from increased sales revenue generated by the scheme to defraud consumers and
14 franchise dealers alike nationwide.⁹⁶

15 183. The Emissions Fraud Enterprise functioned by selling vehicles and component parts
16 to the consuming public. Many of these products are legitimate, including vehicles that do not
17 contain defeat devices. However, the RICO Defendants and their co-conspirators, through their
18 illegal Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent scheme
19 to increase revenue for Defendants and the other entities and individuals associated-in-fact with the
20 Enterprise’s activities through the illegal scheme to sell the Affected Vehicles.

21 184. The Emissions Fraud Enterprise engaged in, and its activities affected interstate and
22 foreign commerce, because it involved commercial activities across state boundaries, such as the
23
24

25 ⁹⁵ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
26 (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

27 ⁹⁶ Volkswagen sold more Affected Vehicles by utilizing an emissions control system that was
28 cheaper than SCRs, all the while charging consumers a premium for purportedly “clean,”
“environmentally friendly” and “fuel efficient” vehicles. Bosch, in turn, sold more EDC Units
because Volkswagen manufactured and sold more Affected Vehicles.

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

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

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

12 187. The RICO Defendants participated in the operation and management of the Emissions
13 Fraud Enterprise by directing its affairs, as described herein. While the RICO Defendants
14 participated in, and are members of, the enterprise, they have a separate existence from the
15 enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers,
16 directors, employees, individual personhood, reporting requirements, and financial statements.

17 188. FCA exerted substantial control and participated in the affairs of the Emissions Fraud
18 Enterprise by:

- 19 a. Designing the Affected Vehicles with defeat devices;
- 20 b. Failing to correct or disable the defeat devices when warned;
- 21 c. Manufacturing, distributing, and selling the Affected Vehicles
22 that emitted greater pollution than allowable under the
applicable regulations;
- 23 d. Misrepresenting and omitting (or causing such
24 misrepresentations and omissions to be made) vehicle
specifications on COC and EO applications;
- 25 e. Introducing the Affected Vehicles into the stream of U.S.
26 commerce without a valid EPA COC and/or CARB EO;
- 27 f. Concealing the existence of the defeat devices and the
28 unlawfully high emissions from regulators and the public;

- 1 g. Persisting in the manufacturing, distribution, and sale of the
- 2 Affected Vehicles even after questions were raised about the
- 3 emissions testing and discrepancies concerning the same;
- 4 h. Misleading government regulators as to the nature of the defeat
- 5 devices and the defects in the Affected Vehicles;
- 6 i. Misleading the driving public as to the nature of the defeat
- 7 devices and the defects in the Affected Vehicles;
- 8 j. Designing and distributing marketing materials that
- 9 misrepresented and concealed the defect in the vehicles;
- 10 k. Otherwise misrepresenting or concealing the defective nature
- 11 of the Affected Vehicles from the public and regulators; and
- 12 l. Illegally selling and/or distributing the Affected Vehicles;
- 13 collecting revenues and profits from the sale of such products;
- 14 and ensuring that the other RICO Defendants and unnamed co-
- 15 conspirators complied with the fraudulent scheme.

16 189. Bosch also participated in, operated and/or directed the Emissions Fraud Enterprise.

17 Bosch participated in the fraudulent scheme by manufacturing, installing, testing, modifying, and

18 supplying the EDC Unit 17 which operated as a “defeat device” in the Affected Vehicles. Bosch

19 exercised tight control over the coding and other aspects of the defeat device software and was

20 closely collaborated with FCA to develop, customize, and calibrate the defeat devices. Additionally,

21 Bosch continuously cooperated with the FCA to ensure that the EDC Unit 17 was fully integrated

22 into the Affected Vehicles. Bosch also participated in the affairs of the Enterprise by concealing the

23 defeat devices on U.S. documentation and in communications with U.S. regulators. Bosch collected

24 tens of millions of dollars in revenues and profits from the hidden defeat devices installed in the

25 Affected Vehicles.

26 190. Without the RICO Defendants’ willing participation, including Bosch’s active

27 involvement in developing and supplying the critical defeat devices for the Affected Vehicles, the

28 Emissions Fraud Enterprise’s scheme and common course of conduct would not have been

successful.

191. The RICO Defendants directed and controlled the ongoing organization necessary to

implement the scheme at meetings and through communications of which Plaintiff cannot fully know

at present, because such information lies in the Defendants’ and others’ hands.

1 192. The members of the Emissions Fraud Enterprise all served a common purpose;
2 namely, to outsell their law-abiding competitors and increase their revenues through the sale of as
3 many Affected Vehicles (including the emissions components made and sold by Bosch) as possible.
4 Each member of the Emissions Fraud Enterprise shared the bounty generated by the enterprise, *i.e.*,
5 by sharing the benefit derived from increased sales revenue generated by the scheme to defraud.
6 FCA sold more Affected Vehicles by utilizing an emissions control system that was cheaper to
7 install and allowed for generous performance and efficiency tuning, all the while charging consumers
8 a premium for purportedly “clean,” “environmentally friendly” and “fuel efficient” Affected
9 Vehicles. The Bosch Defendants, in turn, sold more EDC Units because FCA manufactured and sold
10 more Affected Vehicles. The RICO Defendants achieved their common purpose by repeatedly
11 misrepresenting and concealing the nature of the Affected Vehicles and the ability of the emissions
12 control systems (including the Bosch-supplied parts) to effectively reduce toxic emissions during
13 normal operating conditions.

14 **2. The Predicate Acts**

15 193. To carry out, or attempt to carry out the scheme to defraud, the RICO Defendants
16 conducted or participated in the conduct of the affairs of the Emissions Fraud Enterprise through a
17 pattern of racketeering activity that employed the use of the mail and wire facilities, in violation of
18 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud).

19 194. Specifically, the RICO Defendants participated in the scheme to defraud by using
20 mail, telephone, and the Internet to transmit writings travelling in interstate or foreign commerce.

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

- 24 a. Application for certificates submitted to the EPA and CARB;
- 25 b. The Affected Vehicles themselves;
- 26 c. Component parts for the defeat devices;
- 27 d. Essential hardware for the Affected Vehicles;
- 28 e. Falsified emission tests;

- 1 f. Fraudulently-obtained EPA COCs and CARB EOs;
- 2 g. Vehicle registrations and plates as a result of the fraudulently-
- 3 obtained EPA COCs and CARB EOs;
- 4 h. Documents and communications that facilitated the falsified
- 5 emission tests;
- 6 i. False or misleading communications intended to lull the public
- 7 and regulators from discovering the defeat devices and/or other
- 8 auxiliary devices;
- 9 j. Sales and marketing materials, including advertising, websites,
- 10 product packaging, brochures, and labeling, which
- 11 misrepresented and concealed the true nature of the Affected
- 12 Vehicles;
- 13 k. Documents intended to facilitate the manufacture and sale of
- 14 the Affected Vehicles, including bills of lading, invoices,
- 15 shipping records, reports and correspondence;
- 16 l. Documents to process and receive payment for the Affected
- 17 Vehicles by unsuspecting franchise dealers, including invoices
- 18 and receipts;
- 19 m. Payments to Bosch;
- 20 n. Deposits of proceeds; and
- 21 o. Other documents and things, including electronic
- 22 communications.

17 196. The RICO Defendants utilized the interstate and international mail and wires for the
18 purpose of obtaining money or property by means of the omissions, false pretense, and
19 misrepresentations described therein.

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

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

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

6 200. Many of the precise dates of the fraudulent uses of the U.S. Mail and interstate wire
7 facilities have been deliberately hidden, and cannot be alleged without access to Defendants' books
8 and records. However, Plaintiff has described the types of, and in some instances, occasions on
9 which the predicate acts of mail and/or wire fraud occurred. They include thousands of
10 communications to perpetuate and maintain the scheme, including the things and documents
11 described in the preceding paragraphs.

12 201. The RICO Defendants have not undertaken the practices described herein in isolation,
13 but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d), the RICO
14 Defendants conspired to violate 18 U.S.C. § 1962(c), as described herein. Various other persons,
15 firms and corporations, including third-party entities and individuals not named as defendants in this
16 Complaint, have participated as co-conspirators with the RICO Defendants in these offenses and
17 have performed acts in furtherance of the conspiracy to increase or maintain revenues, increase
18 market share, and/or minimize losses for the Defendants and their unnamed co-conspirators
19 throughout the illegal scheme and common course of conduct.

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

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

27 204. The RICO Defendants and each member of the conspiracy, with knowledge and
28 intent, have agreed to the overall objectives of the conspiracy and participated in the common course

1 of conduct to commit acts of fraud and indecency in designing, manufacturing, distributing,
2 marketing, testing, and/or selling the Affected Vehicles (and the defeat devices contained therein).

3 205. Indeed, for the conspiracy to succeed each of the RICO Defendants and their co-
4 conspirators had to agree to implement and use the similar devices and fraudulent tactics—
5 specifically complete secrecy about the defeat devices in the Affected Vehicles.

6 206. The RICO Defendants knew and intended that government regulators, as well as
7 Plaintiff and Class members, would rely on the material misrepresentations and omissions made by
8 them about the Affected Vehicles. The RICO Defendants knew and intended Plaintiff and the Class
9 would incur costs and damages as a result. As fully alleged herein, Plaintiff and the Class relied
10 upon Defendants' representations and omissions that were made or caused by them. Plaintiff's
11 reliance is made obvious by the fact that: (1) they purchased hundreds of thousands of vehicles that
12 never should have been introduced into the U.S. stream of commerce and whose worth is far less. In
13 addition, the EPA, CARB, and other regulators relied on the misrepresentations and material
14 omissions made or caused to be made by the RICO Defendants; otherwise FCA could not have
15 obtained valid COCs and EOs to sell the Affected Vehicles.

16 207. The RICO Defendants' conduct in furtherance of this scheme was intentional.
17 Plaintiff and the Class were harmed as a result of the RICO Defendants' intentional conduct.
18 Plaintiff, the Class, regulators and consumers, among others, relied on the RICO Defendants'
19 material misrepresentations and omissions.

20 208. As described herein, the RICO Defendants engaged in a pattern of related and
21 continuous predicate acts for many years. The predicate acts constituted a variety of unlawful
22 activities, each conducted with the common purpose of defrauding Plaintiff and other Class members
23 and obtaining significant monies and revenues from them and through them while providing
24 Affected Vehicles worth significantly less than the invoice price paid. The predicate acts also had
25 the same or similar results, participants, victims, and methods of commission. The predicate acts
26 were related and not isolated events.

27 209. The predicate acts all had the purpose of generating significant revenue and profits for
28 the RICO Defendants at the expense of Plaintiff and the Class, and consumers. The predicate acts

1 were committed or caused to be committed by the RICO Defendants through their participation in
2 the Emissions Fraud Enterprise and in furtherance of its fraudulent scheme, and were interrelated in
3 that they involved obtaining Plaintiff's and Class members' funds, artificially inflating the brand and
4 dealership goodwill values, and avoiding the expenses associated with remediating the Affected
5 Vehicles.

6 210. During the design, manufacture, testing, marketing and sale of the Affected Vehicles,
7 the RICO Defendants shared technical, marketing and financial information that plainly revealed the
8 emissions control systems in the Affected Vehicles as the ineffective, illegal and fraudulent piece of
9 technology they were and are. Nevertheless, the RICO Defendants shared and disseminated
10 information that deliberately represented Affected Vehicles as "clean," "environmentally friendly,"
11 and "fuel efficient."

12 211. By reason of and as a result of the conduct of the RICO Defendants, and, in particular,
13 its pattern of racketeering activity, Plaintiff and the Class have been injured in multiple ways,
14 including, but not limited to:

- 15 a. Overpayment for Affected Vehicles, in that Plaintiff and the Class believed
16 they were paying for vehicles that met certain emission and fuel efficiency
17 standards and obtained vehicles that were not legal to sell in the U.S.; and
18 b. The value of the Affected Vehicles has diminished, thus reducing their sale
19 and resale value.

20 212. The RICO Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and
21 proximately caused injuries and damages to Plaintiff and the Class, and Plaintiff and the Class are
22 entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief,
23 costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c). Each of the RICO defendants
24 knew, understood and intended for members of the Class to purchase the Affected Vehicles, and
25 knew, understood, and foresaw that revelation of the truth would injure members of the Class.

1 **B. Claims Brought on Behalf of the California Class**

2 **COUNT I**

3 **FRAUD BY CONCEALMENT UNDER CALIFORNIA LAW**

4 213. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

5 214. This claim is brought on behalf of the California Class against FCA and Bosch.

6 215. FCA designed, manufactured, marketed, sold, and/or leased Affected Vehicles to
7 Plaintiff and the California Class members. FCA represented to Plaintiff and the California Class
8 members in advertising and other forms of communication, including standard and uniform material
9 provided with each car, that the Affected Vehicles had no significant defects, complied with EPA
10 and state emissions regulations, and would perform and operate properly when driven in normal
11 usage. Bosch was aware of FCA's representations and their falsity.

12 216. The Affected Vehicles purchased or leased by Plaintiff and the California Class
13 members were, in fact, defective, non-EPA compliant, and unreliable, because the NOx reduction
14 system in the Affected Vehicles does not effectively mitigate emissions.

15 217. FCA intentionally concealed, suppressed, and failed to disclose the facts that the
16 Affected Vehicles had defective emissions controls, emitted unlawfully high levels of pollutants such
17 as NOx, and were non-compliant with EPA emission requirements.

18 218. As alleged in this complaint, at all relevant times, FCA has held out the Affected
19 Vehicles to be EPA-compliant reduced emissions vehicles. FCA disclosed certain details about the
20 EcoDiesel Clean Diesel engine, but nonetheless, FCA intentionally failed to disclose the important
21 facts that the Affected Vehicles had defective emissions controls, emitted unlawfully high levels of
22 pollutants, and were non-compliant with EPA emissions requirements, making other disclosures
23 about the emission system deceptive.

24 219. The truth about the defective emissions controls, unlawfully high emissions, and non-
25 compliance with EPA emissions requirements was known only to FCA; Plaintiff and the California
26 Class members did not know of these facts and FCA actively concealed these facts from Plaintiff and
27 California Class members.

1 220. Plaintiff and California Class members reasonably relied upon FCA's deception.
2 They had no way of knowing that FCA's representations were false and/or misleading. As
3 consumers, Plaintiff and California Class members did not and could not unravel FCA's deception
4 on their own. Rather, FCA intended to deceive Plaintiff and California Class members by
5 concealing the true facts about the Affected Vehicles' emissions.

6 221. FCA also concealed and suppressed material facts concerning what is evidently the
7 true culture of FCA—one characterized by an emphasis on profits and sales above compliance with
8 federal and state clean air law, and emissions regulations that are meant to protect the public and
9 consumers. It also emphasized profits and sales above the trust that Plaintiff and members placed in
10 its representations. Consumers buy diesel cars from FCA because they feel they are clean diesel
11 cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely
12 what the Affected Vehicles are doing during real-world driving conditions.

13 222. FCA's false representations were material to consumers because they concerned the
14 quality of the Affected Vehicles, because they concerned compliance with applicable federal and
15 state laws and regulations regarding clean air and emissions, and also because the omissions played a
16 significant role in the value of the vehicles. As FCA well knew, its customers, including Plaintiff
17 and California Class members, highly valued that the vehicles they were purchasing or leasing were
18 clean diesel cars with reduced emissions, and they paid accordingly.

19 223. FCA had a duty to disclose the emissions defect, defective design of emissions
20 controls, and violations with respect to the Affected Vehicles because details of the true facts were
21 known and/or accessible only to FCA, because FCA had exclusive knowledge as to such facts, and
22 because FCA knew these facts were not known to or reasonably discoverable by Plaintiff or
23 California Class members. FCA also had a duty to disclose because it made general affirmative
24 representations about the qualities of its vehicles with respect to emissions standards, starting with
25 references to them as *reduced emissions* diesel cars and as compliant with all laws in each state,
26 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
27 forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to
28 compliance with federal and state clean air laws and emissions regulations, and its actual practices

1 with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff, FCA
2 had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed
3 facts were material because they directly impact the value of the Affected Vehicles purchased or
4 leased by Plaintiff and California Class members. Whether a manufacturer's products pollute,
5 comply with federal and state clean air laws and emissions regulations, and whether that
6 manufacturer tells the truth with respect to such compliance or non-compliance, are material
7 concerns to a consumer, including with respect to the emissions certifications testing their vehicles
8 must pass. FCA represented to Plaintiff and California Class members that they were purchasing or
9 leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective and
10 unlawfully high emission vehicles.

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

16 225. On information and belief, FCA has still not made full and adequate disclosures and
17 continues to defraud Plaintiff and California Class members by concealing material information
18 regarding the emissions qualities of the Affected Vehicles.

19 226. Plaintiff and California Class members were unaware of the omitted material facts
20 referenced herein, and they would not have acted as they did if they had known of the concealed
21 and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel
22 cars manufactured by FCA, and/or would not have continued to drive their heavily polluting
23 vehicles, or would have taken other affirmative steps in light of the information concealed from
24 them. Plaintiff's and members' actions were justified. FCA was in exclusive control of the material
25 facts, and such facts were not generally known to the public, Plaintiff, or California Class members.

26 227. Because of the concealment and/or suppression of the facts, Plaintiff and California
27 Class members have sustained damage because they own vehicles that are diminished in value as a
28 result of FCA's concealment of the true quality and quantity of those vehicles' emissions and FCA's

1 failure to timely disclose the defect or defective design of the EcoDiesel Clean Diesel engine system,
2 the actual emissions qualities and quantities of FCA-branded vehicles, and the serious issues
3 engendered by FCA's corporate policies. Had Plaintiff and California Class members been aware of
4 the true emissions facts with regard to the Affected Vehicles, and FCA's disregard for the truth and
5 compliance with applicable federal and state laws and regulations, Plaintiff and members who
6 purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles or
7 would not have purchased or leased them at all.

8 228. The value of Plaintiff's and California Class members' vehicles has diminished as a
9 result of FCA's fraudulent concealment of the defective emissions controls of the Affected Vehicles,
10 the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA
11 emissions requirements, all of which has greatly tarnished the FCA brand name, which is attached to
12 Plaintiff's and California Class members' vehicles, and made any reasonable consumer reluctant to
13 purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market
14 value for the vehicles.

15 229. Bosch aided and abetted FCA's fraudulent concealment.

16 230. Accordingly, FCA is liable to Plaintiff and California Class members for damages in
17 an amount to be proven at trial.

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

23 **COUNT II**

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

26 232. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

27 233. This claim is brought on behalf of the California Class against FCA and Bosch.

1 234. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et*
2 *seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act
3 or practice and unfair, deceptive, untrue or misleading advertising.”

4 235. FCA’s conduct, as described herein, was and is in violation of the UCL. FCA’s
5 conduct violates the UCL in at least the following ways:

- 6 a. By failing to disclose that the NOx reduction system in the Affected Vehicles
7 does not effectively mitigate emissions;
- 8 b. By selling and leasing Affected Vehicles that suffer from a defective
9 emissions control system and that emit unlawfully high levels of pollutants
10 under normal driving conditions;
- 11 c. By knowingly and intentionally concealing from Plaintiff and the California
12 Class members that the Affected Vehicles suffer from a defective emissions
13 control system and emit unlawfully high levels of pollutants under normal
14 driving conditions;
- 15 d. By marketing Affected Vehicles as reduced emissions vehicles possessing
16 functional and defect-free, EPA-compliant diesel engine systems;
- 17 e. By deceptively obtaining EPA certification for Affected Vehicles;
- 18 f. By violating federal laws, including the Clean Air Act; and
- 19 g. By violating other California laws, including California consumer protection
20 laws and California laws governing vehicle emissions and emission testing
21 requirements.

22 236. FCA’s misrepresentations and omissions alleged herein caused Plaintiff and the
23 California Class members to make their purchases or leases of their Affected Vehicles. Absent those
24 misrepresentations and omissions, Plaintiff and the California Class members would not have
25 purchased or leased these vehicles, would not have purchased or leased Affected Vehicles at the
26 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did
27 not contain defective EcoDiesel Clean Diesel engine systems that failed to comply with EPA and
28 California emissions standards.

1 237. Accordingly, Plaintiff and the California Class members have suffered injury in fact,
2 including lost money or property, as a result of FCA’s misrepresentations and omissions.

3 238. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by
4 FCA under Cal. Bus. & Prof. Code § 17200.

5 239. Plaintiff requests that this Court enter such orders or judgments as may be necessary
6 to enjoin FCA from continuing its unfair, unlawful, and/or deceptive practices and to restore to
7 Plaintiff and members of the California Class any money it acquired by unfair competition, including
8 restitution and/or disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code
9 § 3345, and for such other relief set forth below.

10 **COUNT III**

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

13 240. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

14 241. This claim is brought on behalf of the California Class against FCA and Bosch.

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

19 243. The Affected Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

20 244. Plaintiff and the California Class members are “consumers” as defined in Cal. Civ.
21 Code § 1761(d), and Plaintiff, the California Class members, and FCA are “persons” as defined in
22 Cal. Civ. Code § 1761(c).

23 245. As alleged above, FCA made representations concerning the benefits, efficiency,
24 performance and safety features of the EcoDiesel Clean Diesel engine systems that were misleading.

25 246. In purchasing or leasing the Affected Vehicles, Plaintiff and the California Class
26 members were deceived by FCA’s failure to disclose that the Affected Vehicles were equipped with
27 defective EcoDiesel Clean Diesel engine systems that failed EPA and California emissions
28 standards.

1 247. FCA's conduct, as described herein, was and is in violation of the CLRA. FCA's
2 conduct violates at least the following enumerated CLRA provisions:

- 3 a. Cal. Civ. Code § 1770(a)(2): misrepresenting the approval or certification of
4 goods.
- 5 b. Cal. Civ. Code § 1770(a)(3): misrepresenting the certification by another.
- 6 c. Cal. Civ. Code § 1770(a)(5): representing that goods have sponsorship,
7 approval, characteristics, uses, benefits, or quantities which they do not have.
- 8 d. Cal. Civ. Code § 1770(a)(7): representing that goods are of a particular
9 standard, quality, or grade, if they are of another.
- 10 e. Cal. Civ. Code § 1770(a)(9): advertising goods with intent not to sell them as
11 advertised.
- 12 f. Cal. Civ. Code § 1770(a)(16): representing that goods have been supplied in
13 accordance with a previous representation when they have not.

14 248. Plaintiff and the California Class members have suffered injury in fact and actual
15 damages resulting from FCA's material omissions and misrepresentations and sale of Affected
16 Vehicles with defective emissions controls because they paid an inflated purchase or lease price for
17 the Affected Vehicles and because they stand to pay additional fuel costs if and when their Affected
18 Vehicles are made to comply with FCA's promises.

19 249. FCA knew, should have known, or was reckless in not knowing of the defective
20 design and/or manufacture of the EcoDiesel Clean Diesel engine systems, and that the Affected
21 Vehicles were not suitable for their intended use.

22 250. The facts concealed and omitted by FCA to Plaintiff and the California Class
23 members are material in that a reasonable consumer would have considered them to be important in
24 deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had Plaintiff and
25 the California Class members known about the defective nature of the Affected Vehicles, and their
26 non-compliance with EPA requirements, they would not have purchased or leased the Affected
27 Vehicles or would not have paid the prices they paid.

28 251. Plaintiff and the California Class members have provided FCA with notice of its
violations of the CLRA pursuant to Cal. Civ. Code § 1782(a). The notice was transmitted to FCA on
November 28, 2016.

1 252. Plaintiff’s and the California Class members’ injuries were proximately caused by
2 FCA’s unlawful and deceptive business practices.

3 253. In accordance with Cal. Civ. Code § 1780(a), Plaintiff and members of the California
4 Class seek injunctive relief for FCA’s violations of the CLRA.

5 254. While Plaintiff and the California Class members do not seek to recover damages
6 under the CLRA in this initial Complaint, after mailing appropriate notice and demand in accordance
7 with Cal. Civ. Code § 1782(a) & (d), Plaintiff will subsequently amend this Complaint to also
8 include a request for compensatory and punitive damages.

9 **COUNT IV**

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

12 255. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

13 256. This claim is brought on behalf of the California Class against FCA and Bosch.

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

21 258. FCA caused to be made or disseminated through California and the U.S., through
22 advertising, marketing, and other publications, statements that were untrue or misleading, and which
23 were known, or which by the exercise of reasonable care should have been known, to FCA to be
24 untrue and misleading to consumers, including Plaintiff and the California Class members.

25 259. FCA has violated Cal. Bus. & Prof. Code § 17500 because the misrepresentations and
26 omissions regarding the functionality, reliability, environmental-friendliness, lawfulness, and safety
27 of Affected Vehicles as set forth in this Complaint were material and likely to deceive a reasonable
28 consumer.

1 260. Plaintiff and the California Class members have suffered injury in fact, including the
2 loss of money or property, as a result of FCA’s unfair, unlawful, and/or deceptive practices. In
3 purchasing or leasing their Affected Vehicles, Plaintiff and the California Class members relied on
4 the misrepresentations and/or omissions of FCA with respect to the functionality, reliability,
5 environmental-friendliness, lawfulness, and safety of the Affected Vehicles. FCA’s representations
6 turned out not to be true because the Affected Vehicles are distributed with EcoDiesel engine
7 systems that include defective emissions controls. Had Plaintiff and the California Class members
8 known this, they would not have purchased or leased their Affected Vehicles and/or paid as much for
9 them. Accordingly, Plaintiff and the California Class members overpaid for their Affected Vehicles
10 and did not receive the benefit of their bargain.

11 261. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
12 conduct of FCA’s business. FCA’s wrongful conduct is part of a pattern or generalized course of
13 conduct that is still perpetuated and repeated, both in the State of California and nationwide.

14 262. Plaintiff, individually and on behalf of the California Class, requests that this Court
15 enter such orders or judgments as may be necessary to enjoin FCA from continuing their unfair,
16 unlawful, and/or deceptive practices and to restore to Plaintiff and the other members any money
17 FCA acquired by unfair competition, including restitution and/or disgorgement, and for such other
18 relief set forth below.

19 **C. Claims Brought on Behalf of the Alabama Subclass**

20 **COUNT I**

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

23 263. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

24 264. Plaintiff brings this Count on behalf of the Alabama Subclass against FCA.

25 265. Plaintiff and the Subclass members are “consumers” within the meaning of Ala. Code
26 § 8-19-3(2).

27 266. Plaintiff, the Subclass members, and Defendant are “persons” within the meaning of
28 Ala. Code § 8-19-3(5).

1 267. The Affected Vehicles are “goods” within the meaning of Ala. Code § 8-19-3(3).

2 268. Defendant was and is engaged in “trade or commerce” within the meaning of Ala.
3 Code § 8-19-3(8).

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

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

15 **COUNT II**

16 **FRAUDULENT CONCEALMENT**
17 **(BASED ON ALABAMA LAW)**

18 271. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

19 272. This claim is brought on behalf of the Alabama Subclass against FCA.

20 273. Defendant intentionally concealed that the NO_x reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
22 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
23 emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s
24 advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-
25 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
26 and denied Plaintiff and the other Subclass members information that is highly relevant to their
27 purchasing decision.
28

1 274. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 275. Defendant knew these representations were false when made.

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

12 277. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

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

27 279. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 280. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

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

16 282. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 283. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

19 285. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 286. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 287. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 288. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 289. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

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

1 **D. Claims Brought on Behalf of the Alaska Subclass**

2 **COUNT I**

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

5 198. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

6 291. Plaintiff brings this Count on behalf of the Alaska Subclass against FCA.

7 292. The Alaska Consumer Protection Act (“Alaska CPA”) proscribes unfair methods of
8 competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful,
9 including: “(4) representing that goods or services have sponsorship, approval, characteristics,
10 ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship,
11 approval, status, affiliation, or connection that the person does not have;” “(6) representing that
12 goods or services are of a particular standard, quality, or grade, or that goods are of a particular style
13 or model, if they are of another;” “(8) advertising goods or services with intent not to sell them as
14 advertised;” or “(12) using or employing deception, fraud, false pretense, false promise,
15 misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that
16 others rely upon the concealment, suppression, or omission in connection with the sale or
17 advertisement of goods or services whether or not a person has in fact been misled, deceived or
18 damaged.” Alaska Stat. Ann. § 45.50.471. Plaintiff will make a demand in satisfaction of Alaska
19 Stat. Ann. § 45.50.535, and may amend this Complaint to assert claims under the Alaska CPA once
20 the required notice period has elapsed. This paragraph is included for purposes of notice only and is
21 not intended to actually assert a claim under the Alaska CPA.

22 **COUNT II**

23 **FRAUDULENT CONCEALMENT**
24 **(BASED ON ALASKA LAW)**

25 293. Plaintiff realleges and incorporates by reference all paragraphs as though fully set
26 forth herein.

27 294. This claim is brought on behalf of the Alaska Subclass against FCA.

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

9 296. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
10 advertising and other forms of communication, including standard and uniform material provided
11 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
12 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
13 properly when driven in normal usage.

14 297. Defendant knew these representations were false when made.

15 298. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
16 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
17 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant’s
18 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
19 Affected Vehicles turns off or is limited during normal driving conditions.

20 299. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 300. As alleged in this Complaint, at all relevant times, Defendant has held out the
28 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain

1 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
2 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
3 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
4 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
5 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
6 making other disclosures about the emission system deceptive.

7 301. The truth about the defective emissions controls and Defendant’s manipulations of
8 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
9 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
10 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
11 members.

12 302. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
13 had no way of knowing that Defendant’s representations were false and/or misleading. As
14 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
15 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
16 true facts about the Affected Vehicles’ emissions.

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

24 304. Defendant’s false representations were material to consumers because they concerned
25 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
26 state laws and regulations regarding clean air and emissions, and also because the representations
27 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
28

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

3 305. Defendant had a duty to disclose the emissions defect, defective design of emissions
4 controls, and violations with respect to the Affected Vehicles because details of the true facts were
5 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
6 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
7 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
8 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
9 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
10 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
11 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
12 respect to compliance with federal and state clean air laws and emissions regulations, and
13 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
14 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
15 truth, but the entire truth. These omitted and concealed facts were material because they directly
16 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
17 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
18 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
19 or non-compliance, are material concerns to a consumer, including with respect to the emissions
20 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
21 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
22 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

1 307. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 308. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 309. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
19 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
20 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
21 or would not have purchased or leased them at all.

22 310. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
23 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
24 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
25 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
26 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
27 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
28 vehicles.

1 311. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
2 amount to be proven at trial.

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

8 **E. Claims Brought on Behalf of the Arizona Subclass**

9 **COUNT I**

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

12 313. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

13 314. Plaintiff brings this Count on behalf of the Arizona Subclass against FCA.

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

20 316. In the course of Defendant's business, it willfully failed to disclose and actively
21 concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during
22 normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-
23 powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer
24 would expect in light of Defendant's advertising campaign, and that the Affected Vehicles emitted
25 unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant
26 engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud,
27 misrepresentations, or concealment, suppression, or omission of any material fact with intent that
28

1 others rely upon such concealment, suppression, or omission, in connection with the sale of Affected
2 Vehicles.

3 317. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
4 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
5 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
6 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
7 including NOx, as described above.

8 318. Plaintiff and Subclass members reasonably relied upon Defendant's false
9 misrepresentations. They had no way of knowing that Defendant's representations were false and
10 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
11 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
12 their own.

13 319. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

14 320. Defendant's deception, fraud, misrepresentation, concealment, suppression, or
15 omission of material facts were likely to and did in fact deceive reasonable consumers.

16 321. Defendant intentionally and knowingly misrepresented material facts regarding the
17 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

18 322. Defendant knew or should have known that its conduct violated the Arizona CFA.

19 323. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
20 emissions systems manipulation because Defendant:

- 21 a. Possessed exclusive knowledge that it manipulated the emissions system in the
22 Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions;
- 24 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 25 c. Made incomplete representations that it manipulated the emissions system in
26 the Affected Vehicles to turn off or limit effectiveness in normal driving
27 conditions, while purposefully withholding material facts from Plaintiff and
28 the Subclass that contradicted these representations.

1 324. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 325. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
9 members.

10 326. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
11 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
12 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
13 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
14 direct and natural consequence of Defendant’s misrepresentations and omissions.

15 327. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
16 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

17 328. Plaintiff and the Subclass seek monetary relief against Defendant in an amount to be
18 determined at trial. Plaintiff and the Subclass also seek punitive damages because Defendant
19 engaged in aggravated and outrageous conduct with an evil mind.

20 329. Plaintiff also seeks attorneys’ fees and any other just and proper relief available.

21 **COUNT II**

22 **FRAUDULENT CONCEALMENT**
23 **(BASED ON ARIZONA LAW)**

24 330. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

25 331. This claim is brought on behalf of the Arizona Subclass against FCA.

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

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

6 333. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
7 advertising and other forms of communication, including standard and uniform material provided
8 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth friendly
9 and low-emission vehicles, complied with EPA regulations, and would perform and operate properly
10 when driven in normal usage.

11 334. Defendant knew these representations were false when made.

12 335. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
13 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
14 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant’s
15 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions.

17 336. Defendant had a duty to disclose that the NOx reduction system in the Affected
18 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
19 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
20 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
21 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
22 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
23 emission vehicles, efficient, and free from defects.

24 337. As alleged in this Complaint, at all relevant times, Defendant has held out the
25 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
26 details about its EcoDiesel, but nonetheless, Defendant intentionally failed to disclose the important
27 facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal
28 driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “defeat

1 device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
2 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
3 making other disclosures about the emission system deceptive.

4 338. The truth about the defective emissions controls and Defendant’s manipulations of
5 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
6 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
7 know of these facts and Defendant actively concealed these facts from Plaintiff and Subclass
8 members.

9 339. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
10 had no way of knowing that Defendant’s representations were false and/or misleading. As
11 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
12 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
13 true facts about the Affected Vehicles’ emissions.

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

21 341. Defendant’s false representations were material to consumers because they concerned
22 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
23 state laws and regulations regarding clean air and emissions, and also because the representations
24 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
25 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
26 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

27 342. Defendant had a duty to disclose the emissions defect, defective design of emissions
28 controls, and violations with respect to the Affected Vehicles because details of the true facts were

1 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
2 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
3 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
4 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
5 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
6 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
7 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
8 respect to compliance with federal and state clean air laws and emissions regulations, and
9 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
10 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
11 truth, but the entire truth. These omitted and concealed facts were material because they directly
12 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
13 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
14 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
15 or non-compliance, are material concerns to a consumer, including with respect to the emissions
16 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
17 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
18 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

24 344. Defendant still has not made full and adequate disclosures, and continues to defraud
25 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
26 of the Affected Vehicles.

27 345. Plaintiff and Subclass members were unaware of the omitted material facts referenced
28 herein, and they would not have acted as they did if they had known of the concealed and/or

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

7 346. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
8 members have sustained damage because they own vehicles that are diminished in value as a result
9 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
10 Defendant's failure to timely disclose the defect or defective design of the EcoDiesel engine, the
11 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
12 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
13 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
14 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
15 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
16 or would not have purchased or leased them at all.

17 347. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
18 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
19 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
20 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
21 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
22 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
23 vehicles.

24 348. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
25 amount to be proven at trial.

26 349. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
27 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
28 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct

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

3 **F. Claims Brought on Behalf of the Arkansas Subclass**

4 **COUNT I**

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

7 350. Plaintiff incorporates by reference all preceding allegations as though fully set forth
8 herein.

9 351. This claim is brought on behalf of the Arkansas Subclass against FCA.

10 352. Defendant, Plaintiff, and Arkansas Subclass members are “persons” within the
11 meaning of the Arkansas Deceptive Trade Practices Act (“Arkansas DTPA”), Ark. Code Ann. § 4-
12 88-102(5).

13 353. The “Affected Vehicles” are “goods” within the meaning of Ark. Code Ann. § 4-88-
14 102(4).

15 354. The Arkansas DTPA prohibits “[d]eceptive and unconscionable trade practices,”
16 which include, but are not limited to, a list of enumerated items, including “[e]ngaging in any other
17 unconscionable, false, or deceptive act or practice in business, commerce, or trade.” Ark. Code Ann.
18 § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection
19 with the sale or advertisement of any goods: “(1) The act, use, or employment by any person of any
20 deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material
21 fact with intent that others rely upon the concealment, suppression, or omission.” Ark. Code Ann. §
22 4-88-108.

23 355. In the course of Defendant’s business, Defendant willfully failed to disclose and
24 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
25 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
26 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
27 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
28 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,

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

10 356. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
11 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
12 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
13 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
14 including NOx, as described above.

15 357. Plaintiff and Subclass members reasonably relied upon Defendant's false
16 misrepresentations. They had no way of knowing that Defendant's representations were false and
17 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
18 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
19 their own.

20 358. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

21 359. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
22 reasonable consumers.

23 360. Defendant intentionally and knowingly misrepresented material facts regarding the
24 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

25 361. Defendant knew or should have known that its conduct violated the Arkansas DTPA.

26 362. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
27 emissions systems manipulation because Defendant:
28

- 1 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 2 Affected Vehicles to turn off or limit effectiveness in normal driving
- 3 conditions;
- 4 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 5 c. Made incomplete representations that it manipulated the emissions system in
- 6 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 7 conditions, while purposefully withholding material facts from Plaintiff and
- 8 the Subclass that contradicted these representations.

9 363. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 364. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
17 members.

18 365. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
19 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
20 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
21 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
22 direct and natural consequence of Defendant’s misrepresentations and omissions.

23 366. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
24 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

25 367. Plaintiff seeks monetary relief measured as the greater of (a) actual damages in an
26 amount to be determined at trial; (b) statutory damages in the amount of \$250 for Plaintiff and each
27 Arkansas Subclass member; (c) reasonable attorneys’ fees; and (d) any other just and proper relief
28 available under Arkansas law. Plaintiff also seeks punitive damages against Defendant because it

1 carried out despicable conduct with willful and conscious disregard of the rights of others.
2 Defendant's unlawful conduct constitutes malice, oppression, and fraud warranting punitive
3 damages.

4 **COUNT II**

5 **FRAUDULENT CONCEALMENT**
6 **(BASED ON ARKANSAS LAW)**

7 368. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

8 369. This claim is brought on behalf of the Arkansas Subclass against FCA.

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

17 371. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
18 advertising and other forms of communication, including standard and uniform material provided
19 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
20 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
21 properly when driven in normal usage.

22 372. Defendant knew these representations were false when made.

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

1 374. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, did not meet and maintain the advertised MPG rate, employed a “defeat device,” emitted
4 pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded
5 those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because
6 Plaintiff and the other Subclass members relied on Defendant’s material representations that the
7 Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from
8 defects.

9 375. As alleged in this Complaint, at all relevant times, Defendant has held out the
10 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
11 details about its EcoDiesel, but nonetheless, Defendant intentionally failed to disclose the important
12 facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal
13 driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “defeat
14 device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
15 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
16 making other disclosures about the emission system deceptive.

17 376. The truth about the defective emissions controls and Defendant’s manipulations of
18 those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the
19 “defeat device,” and non-compliance with EPA emissions requirements was known only to
20 Defendant; Plaintiff and the Subclass members did not know of these facts and Defendant actively
21 concealed these facts from Plaintiff and Subclass members.

22 377. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
23 had no way of knowing that Defendant’s representations were false and/or misleading. As
24 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
25 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
26 true facts about the Affected Vehicles’ emissions.

27 378. Defendant also concealed and suppressed material facts concerning what is evidently
28 the true culture of Defendant—one characterized by an emphasis on profits and sales above

1 compliance with federal and state clean air laws and emissions regulations that are meant to protect
2 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
3 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
4 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
5 environment. And yet, that is precisely what the Affected Vehicles are doing.

6 379. Defendant's false representations were material to consumers because they concerned
7 the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with
8 applicable federal and state laws and regulations regarding clean air and emissions, and also because
9 the representations played a significant role in the value of the vehicles. As Defendant well knew, its
10 customers, including Plaintiff and Subclass members, highly valued that the vehicles they were
11 purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid
12 accordingly.

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

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

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

11 382. Defendant still has not made full and adequate disclosures, and continues to defraud
12 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
13 of the Affected Vehicles.

14 383. Plaintiff and Subclass members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
17 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
18 vehicles, or would have taken other affirmative steps in light of the information concealed from
19 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
20 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
21 members.

22 384. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
23 members have sustained damage because they own vehicles that are diminished in value as a result
24 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and fuel
25 efficiency and Defendant's failure to timely disclose the defect or defective design of the EcoDiesel
26 engine, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues
27 engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of
28 the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth

1 and compliance with applicable federal and state laws and regulations, and its failure to meet and
2 maintain the advertised MPG rate, Plaintiff and Subclass members who purchased or leased new or
3 certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or
4 leased them at all.

5 385. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
6 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
7 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
8 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
9 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
10 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
11 vehicles.

12 386. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
13 amount to be proven at trial.

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

19 **G. Claims Brought on Behalf of the California Subclass**

20 **COUNT I**

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

23 388. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

24 389. This claim is brought on behalf of the California Subclass against FCA.

25 390. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et*
26 *seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act
27 or practice and unfair, deceptive, untrue or misleading advertising."
28

1 391. Defendant’s conduct, as described herein, was and is in violation of the UCL.

2 Defendant’s conduct violates the UCL in at least the following ways:

- 3 a. By failing to disclose that the NOx reduction system in the Affected Vehicles
4 turns off or is limited during normal driving conditions;
- 5 b. By selling and leasing Affected Vehicles that suffer from a defective
6 emissions control system and that emit unlawfully high levels of pollutants
7 under normal driving conditions;
- 8 c. By knowingly and intentionally concealing from Plaintiff and the other
9 Subclass members that the NOx reduction system in the Affected Vehicles
10 turns off or is limited during normal driving conditions and that the Affected
11 Vehicles suffer from a defective emissions control system and emit unlawfully
12 high levels of pollutants under normal driving conditions;
- 13 d. By marketing Affected Vehicles as reduced emissions vehicles possessing
14 functional and defect-free, EPA-compliant diesel engine systems;
- 15 e. By advertising and posting a miles per gallon (“MPG”) rate that the Affected
16 Vehicles do not meet and maintain;
- 17 f. By violating federal laws, including the Clean Air Act; and
- 18 g. By violating other California laws, including California consumer protection
19 laws and California laws governing vehicle emissions and emission testing
20 requirements.

21 392. Defendant intentionally and knowingly misrepresented material facts regarding the
22 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

23 393. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
24 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
25 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
26 controls were defective, that the Affected Vehicles would not meet and maintain the advertised MPG
27 rate; and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as
28 described above.

1 394. Plaintiff and Subclass members reasonably relied upon Defendant's false
2 misrepresentations. They had no way of knowing that Defendant's representations were false and
3 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
4 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
5 their own.

6 395. Defendant knew or should have known that its conduct violated the UCL.

7 396. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
8 emissions systems manipulation because Defendant:

- 9 a. Possessed exclusive knowledge that it manipulated the emissions system in the
10 Affected Vehicles to turn off or limit effectiveness in normal driving
11 conditions;
- 12 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
13 c. Made incomplete representations that it manipulated the emissions system in
14 the Affected Vehicles to turn off or limit effectiveness in normal driving
15 conditions, while purposefully withholding material facts from Plaintiff and
16 the Subclass that contradicted these representations.

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

25 398. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
26 members.

27 399. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
28 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and

1 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
2 their bargain, and their Affected Vehicles have suffered a diminution in value. They also were
3 required to pay more for fuel than they reasonably anticipated based on Defendant's material
4 representations. These injuries are the direct and natural consequence of Defendant's
5 misrepresentations and omissions.

6 400. Defendant's violations present a continuing risk to Plaintiff as well as to the general
7 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

8 401. Defendant's misrepresentations and omissions alleged herein caused Plaintiff and the
9 other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those
10 misrepresentations and omissions, Plaintiff and the other Subclass members would not have
11 purchased or leased these vehicles, would not have purchased or leased Affected Vehicles at the
12 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did
13 not contain defective engines that failed to comply with EPA and California emissions standards.

14 402. Accordingly, Plaintiff and the other Subclass members have suffered injury in fact,
15 including lost money or property, as a result of Defendant's misrepresentations and omissions.

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

20 **COUNT II**

21 **VIOLATIONS OF THE CALIFORNIA CONSUMER** 22 **LEGAL REMEDIES ACT** **(CAL. CIV. CODE § 1750 ET SEQ.)**

23 404. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

24 405. This claim is brought on behalf of the California Subclass against FCA.

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

1 407. The Affected Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

2 408. Plaintiff and the other Subclass members are “consumers” as defined in Cal. Civ.
3 Code § 1761(d), and Plaintiff, Subclass members, and Defendant are “persons” as defined in Cal.
4 Civ. Code § 1761(c).

5 409. As alleged above, Defendant made representations concerning the benefits, efficiency,
6 performance, and safety features of the Affected Vehicles that were misleading.

7 410. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
8 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
9 Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles
10 were equipped with defective EcoDiesel that failed EPA and California emissions standards, and that
11 the Affected Vehicles would not meet and maintain the advertised MPG rate.

12 411. Defendant’s conduct, as described herein, was and is in violation of the CLRA.
13 Defendant’s conduct violates at least the following enumerated CLRA provisions:

- 14 a. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of
15 goods.
- 16 b. Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by another.
- 17 c. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship,
18 approval, characteristics, uses, benefits, or quantities which they do not have.
- 19 d. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular
20 standard, quality, or grade, if they are of another.
- 21 e. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as
22 advertised.
- 23 f. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in
24 accordance with a previous representation when they have not.

25 412. Defendant intentionally and knowingly misrepresented material facts regarding the
26 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

27 413. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
28 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the

1 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
2 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
3 including NOx, as described above. They were also deceived by Defendant's failure to disclose that
4 the Affected Vehicles would not meet and maintain their advertised MPG rate.

5 414. Plaintiff and Subclass members reasonably relied upon Defendant's false
6 misrepresentations. They had no way of knowing that Defendant's representations were false and
7 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
8 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
9 their own.

10 415. Defendant knew or should have known that its conduct violated the CLRA.

11 416. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
12 emissions systems manipulation because Defendant:

- 13 a. Possessed exclusive knowledge that it manipulated the emissions system in the
14 Affected Vehicles to turn off or limit effectiveness in normal driving
15 conditions;
- 16 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 17 c. Made incomplete representations that it manipulated the emissions system in
18 the Affected Vehicles to turn off or limit effectiveness in normal driving
19 conditions, while purposefully withholding material facts from Plaintiff and
20 the Subclass that contradicted these representations.

21 417. Defendant had a duty to disclose that the NOx reduction system in the Affected
22 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
23 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
24 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, were
25 non-EPA-compliant and unreliable, and would not meet and maintain the Affected Vehicles' posted
26 MPG rate, because Plaintiff and the other Subclass members relied on Defendant's material
27 representations that the Affected Vehicles they were purchasing were reduced-emission vehicles,
28 efficient, and free from defects.

1 418. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
2 members.

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

10 420. Defendant's violations present a continuing risk to Plaintiff as well as to the general
11 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

12 421. Defendant knew, should have known, or was reckless in not knowing of the defective
13 design and/or manufacture of the EcoDiesel engines, and that the Affected Vehicles were not
14 suitable for their intended use.

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

22 423. Plaintiff and the Subclass have provided Defendant with notice of their violations of
23 the CLRA pursuant to Cal. Civ. Code § 1782(a).

24 424. Plaintiff's and the other Subclass members' injuries were proximately caused by
25 Defendant's unlawful and deceptive business practices.

26 425. While Plaintiff do not seek to recover damages under the CLRA in this initial
27 Complaint, after mailing appropriate notice and demand in accordance with Cal. Civil Code
28

1 § 1782(a) & (d), Plaintiff will subsequently amend this Complaint to also include a request for
2 compensatory and punitive damages.

3 **COUNT III**

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

6 426. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

7 427. This claim is brought on behalf of the California Subclass against FCA.

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

15 429. Defendant caused to be made or disseminated through California and the U.S.,
16 through advertising, marketing, and other publications, statements that were untrue or misleading,
17 and which were known, or which by the exercise of reasonable care should have been known to
18 Defendant, to be untrue and misleading to consumers, including Plaintiff and the other Subclass
19 members.

20 430. Defendant has violated Cal. Bus. & Prof. Code § 17500 because the
21 misrepresentations and omissions regarding the functionality, reliability, environmental-friendliness,
22 lawfulness, fuel efficiency, and safety of Affected Vehicles as set forth in this Complaint were
23 material and likely to deceive a reasonable consumer.

24 431. Plaintiff and the other Subclass members have suffered injury in fact, including the
25 loss of money or property, as a result of Defendant’s unfair, unlawful, and/or deceptive practices. In
26 purchasing or leasing their Affected Vehicles, Plaintiff and the other Subclass members relied on the
27 misrepresentations and/or omissions of Defendant with respect to the functionality, reliability,
28 environmental-friendliness, fuel efficiency, and lawfulness of the Affected Vehicles. Defendant’s

1 representations turned out not to be true because the NOx reduction system in the Affected Vehicles
2 turns off or is limited during normal driving conditions and the Affected Vehicles are distributed
3 with EcoDiesel engines that include defective emissions controls and a “defeat device.” The
4 Affected Vehicles also do not meet and maintain the posted MPG rate. Had Plaintiff and the other
5 Subclass members known this, they would not have purchased or leased their Affected Vehicles
6 and/or paid as much for them. Accordingly, Plaintiff and the other Subclass members overpaid for
7 their Affected Vehicles and did not receive the benefit of their bargain.

8 432. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
9 conduct of Defendant’s business. Defendant’s wrongful conduct is part of a pattern or generalized
10 course of conduct that is still perpetuated and repeated, both in the State of California and
11 nationwide.

12 433. Plaintiff, individually and on behalf of the other Subclass members, request that this
13 Court enter such orders or judgments as may be necessary to restore to Plaintiff and the other
14 Subclass members any money Defendant acquired by unfair competition, including restitution and/or
15 disgorgement, and for such other relief as may be appropriate.

16 **COUNT IV**

17 **FRAUDULENT CONCEALMENT**
18 **(BASED ON CALIFORNIA LAW)**

19 434. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

20 435. This claim is brought on behalf of the California Subclass against FCA.

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

1 437. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 438. Defendant knew these representations were false when made.

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

13 440. Defendant had a duty to disclose that the NOx reduction system in the Affected
14 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
15 defective, did not meet and maintain the advertised MPG rate, employed a "defeat device," emitted
16 pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded
17 those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because
18 Plaintiff and the other Subclass members relied on Defendant's material representations that the
19 Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from
20 defects.

21 441. As alleged in this Complaint, at all relevant times, Defendant has held out the
22 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
23 details about its EcoDiesel, but nonetheless, Defendant intentionally failed to disclose the important
24 facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal
25 driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "defeat
26 device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
27 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
28 making other disclosures about the emission system deceptive.

1 442. The truth about the defective emissions controls and Defendant’s manipulations of
2 those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the
3 “defeat device,” and non-compliance with EPA emissions requirements was known only to
4 Defendant; Plaintiff and the Subclass members did not know of these facts and Defendant actively
5 concealed these facts from Plaintiff and Subclass members.

6 443. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
7 had no way of knowing that Defendant’s representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles’ emissions.

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

18 445. Defendant’s false representations were material to consumers because they concerned
19 the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with
20 applicable federal and state laws and regulations regarding clean air and emissions, and also because
21 the representations played a significant role in the value of the vehicles. As Defendant well knew, its
22 customers, including Plaintiff and Subclass members, highly valued that the vehicles they were
23 purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid
24 accordingly.

25 446. Defendant had a duty to disclose the emissions defect, defective design of emissions
26 controls, failure to meet and maintain the advertised MPG rate, and violations with respect to the
27 Affected Vehicles because details of the true facts were known and/or accessible only to Defendant,
28 because Defendant had exclusive knowledge as to such facts, and because Defendant knew these

1 facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Defendant
2 also had a duty to disclose because it made general affirmative representations about the qualities of
3 the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel*
4 *cars* and as compliant with all laws in each state, which were misleading, deceptive, and incomplete
5 without the disclosure of the additional facts set forth above regarding the actual emissions of the
6 vehicles, Defendant's actual philosophy with respect to compliance with federal and state clean air
7 laws and emissions regulations, and Defendant's actual practices with respect to the vehicles at issue.
8 Having volunteered to provide information to Plaintiff and Subclass members, Defendant had the
9 duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were
10 material because they directly impact the value of the Affected Vehicles purchased or leased by
11 Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal
12 and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with
13 respect to such compliance or non-compliance, are material concerns to a consumer, including with
14 respect to the emissions certifications testing their vehicles must pass. Defendant represented to
15 Plaintiff and Subclass members that they were purchasing or leasing reduced-emission diesel
16 vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with
17 unlawfully high emissions.

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

23 448. Defendant still has not made full and adequate disclosures, and continues to defraud
24 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
25 of the Affected Vehicles.

26 449. Plaintiff and Subclass members were unaware of the omitted material facts referenced
27 herein, and they would not have acted as they did if they had known of the concealed and/or
28 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars

1 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
2 vehicles, or would have taken other affirmative steps in light of the information concealed from
3 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
4 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
5 members.

6 450. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
7 members have sustained damage because they own vehicles that are diminished in value as a result
8 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and fuel
9 efficiency and Defendant's failure to timely disclose the defect or defective design of the EcoDiesel
10 engine, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues
11 engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of
12 the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth
13 and compliance with applicable federal and state laws and regulations, and its failure to meet and
14 maintain the advertised MPG rate, Plaintiff and Subclass members who purchased or leased new or
15 certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or
16 leased them at all.

17 451. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
18 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
19 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
20 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
21 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
22 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
23 vehicles.

24 452. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
25 amount to be proven at trial.

26 453. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
27 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
28 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct

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

3 **H. Claims Brought on Behalf of the Colorado Subclass**

4 **COUNT I**

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

7 454. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

8 455. Plaintiff brings this Count on behalf of the Colorado Subclass against FCA.

9 456. Colorado's Consumer Protection Act (the "Colorado CPA") prohibits a person from
10 engaging in a "deceptive trade practice," which includes knowingly making "a false representation as
11 to the source, sponsorship, approval, or certification of goods," or "a false representation as to the
12 characteristics, ingredients, uses, benefits, alterations, or quantities of goods." Colo. Rev. Stat. § 6-
13 1-105(1)(b), (e). The Colorado CPA further prohibits "represent[ing] that goods ... are of a
14 particular standard, quality, or grade ... if he knows or should know that they are of another," and
15 "advertis[ing] goods ... with intent not to sell them as advertised." Colo. Rev. Stat. § 6-1-105(1)(g),
16 (i).

17 457. Defendant is a "person" under § 6-1-102(6) of the Colorado CPA, Colo. Rev. Stat.
18 § 6-1-101 *et seq.*

19 458. Plaintiff and Colorado Subclass members are "consumers" for the purpose of Colo.
20 Rev. Stat. § 6-1-113(1)(a) who purchased or leased one or more Affected Vehicles.

21 459. In the course of Defendant's business, Defendant willfully failed to disclose and
22 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
23 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
24 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
25 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
26 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
27 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
28 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,

1 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
2 particular standard and quality when they are not; failing to reveal a material fact, the omission of
3 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
4 the consumer; making a representation of fact or statement of fact material to the transaction such
5 that a person reasonably believes the represented or suggested state of affairs to be other than it
6 actually is; and failing to reveal facts that are material to the transaction in light of representations of
7 fact made in a positive manner.

8 460. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
9 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
10 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
11 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
12 including NOx, as described above.

13 461. Plaintiff and Subclass members reasonably relied upon Defendant's false
14 misrepresentations. They had no way of knowing that Defendant's representations were false and
15 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
16 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
17 their own.

18 462. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

19 463. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
20 reasonable consumers.

21 464. Defendant intentionally and knowingly misrepresented material facts regarding the
22 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

23 465. Defendant knew or should have known that its conduct violated the Colorado CPA.

24 466. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
25 emissions systems manipulation because Defendant:

- 26 a. Possessed exclusive knowledge that it manipulated the emissions system in the
27 Affected Vehicles to turn off or limit effectiveness in normal driving
28 conditions;

- 1 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 2 c. Made incomplete representations that it manipulated the emissions system in
- 3 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 4 conditions, while purposefully withholding material facts from Plaintiff and
- 5 the Subclass that contradicted these representations.

6 467. Defendant had a duty to disclose that the NOx reduction system in the Affected
7 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
8 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
9 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
10 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
11 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
12 emission vehicles, efficient, and free from defects.

13 468. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
14 members.

15 469. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
16 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
17 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
18 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
19 direct and natural consequence of Defendant’s misrepresentations and omissions.

20 470. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
21 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

22 471. Pursuant to Colo. Rev. Stat. § 6-1-113, Plaintiff and the Subclass seek monetary relief
23 against Defendant measured as the greater of (a) actual damages in an amount to be determined at
24 trial and the discretionary trebling of such damages, or (b) statutory damages in the amount of \$500
25 for Plaintiff and each Subclass member.

26 472. Plaintiff and the Subclass also seek declaratory relief, attorneys’ fees, and any other
27 just and proper relief available under the Colorado CPA.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON COLORADO LAW)**

1
2
3 473. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

4 474. Plaintiff brings this Count on behalf of the Colorado Subclass against FCA.

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

13 476. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
14 advertising and other forms of communication, including standard and uniform material provided
15 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
16 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
17 properly when driven in normal usage.

18 477. Defendant knew these representations were false when made.

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

24 479. Defendant had a duty to disclose that the NOx reduction system in the Affected
25 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
26 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
27 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
28

1 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
2 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
3 emission vehicles, efficient, and free from defects.

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

12 481. The truth about the defective emissions controls and Defendant's manipulations of
13 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
14 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
15 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
16 members.

17 482. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
18 had no way of knowing that Defendant's representations were false and/or misleading. As
19 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
20 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
21 true facts about the Affected Vehicles' emissions.

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

1 484. Defendant's false representations were material to consumers because they concerned
2 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
3 state laws and regulations regarding clean air and emissions, and also because the representations
4 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
5 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
6 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

7 485. Defendant had a duty to disclose the emissions defect, defective design of emissions
8 controls, and violations with respect to the Affected Vehicles because details of the true facts were
9 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
10 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
11 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
12 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
13 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
14 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
15 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
16 respect to compliance with federal and state clean air laws and emissions regulations, and
17 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
18 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
19 truth, but the entire truth. These omitted and concealed facts were material because they directly
20 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
21 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
22 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
23 or non-compliance, are material concerns to a consumer, including with respect to the emissions
24 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
25 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
26 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

27 486. Defendant actively concealed and/or suppressed these material facts, in whole or in
28 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel

1 vehicles and did not or could not comply with federal and state laws governing clean air and
2 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
3 at the expense of Plaintiff and Subclass members.

4 487. Defendant still has not made full and adequate disclosures, and continues to defraud
5 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
6 of the Affected Vehicles.

7 488. Plaintiff and Subclass members were unaware of the omitted material facts referenced
8 herein, and they would not have acted as they did if they had known of the concealed and/or
9 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
10 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
11 vehicles, or would have taken other affirmative steps in light of the information concealed from
12 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
13 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
14 members.

15 489. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
16 members have sustained damage because they own vehicles that are diminished in value as a result
17 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
18 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
19 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
20 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
21 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
22 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
23 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
24 or would not have purchased or leased them at all.

25 490. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
26 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
27 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
28 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to

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

4 491. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
5 amount to be proven at trial.

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

11 **I. Claims Brought on Behalf of the Connecticut Subclass**

12 **COUNT I**

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

15 493. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

16 494. Plaintiff brings this Count on behalf of the Connecticut Subclass against FCA.

17 495. Defendant and Plaintiff are each "persons" as defined by Conn. Gen. Stat. Ann. § 42-
18 110a(3).

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

1 deceptive trade practices because its conduct (1) offends public policy as it has been established by
2 statutes, the common law or other established concept of unfairness; (2) is immoral, unethical,
3 oppressive, or unscrupulous; or (3) causes substantial injury to consumers, competitors, or other
4 business persons. The harm caused to consumers, motorists, and pedestrians outweighs any benefit
5 associated with such practices, and Defendant fraudulently concealed the defective nature of the
6 Affected Vehicles from consumers.

7 497. Defendant has also engaged in deceptive conduct because (1) it made representations,
8 omissions, or engaged in other conduct likely to mislead consumers; (2) consumers interpret the
9 message reasonably under the circumstances; and (3) the misleading representation, omission, or
10 practice is material—that is, likely to affect consumer decisions or conduct.

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

26 499. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
27 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
28 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions

1 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
2 including NOx, as described above.

3 500. Plaintiff and Subclass members reasonably relied upon Defendant's false
4 misrepresentations. They had no way of knowing that Defendant's representations were false and
5 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
6 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own.

8 501. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

9 502. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
10 reasonable consumers.

11 503. Defendant intentionally and knowingly misrepresented material facts regarding the
12 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

13 504. Defendant knew or should have known that its conduct violated the Connecticut
14 UTPA.

15 505. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
16 emissions systems manipulation because Defendant:

- 17 a. Possessed exclusive knowledge that it manipulated the emissions system in the
18 Affected Vehicles to turn off or limit effectiveness in normal driving
19 conditions;
- 20 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 21 c. Made incomplete representations that it manipulated the emissions system in
22 the Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions, while purposefully withholding material facts from Plaintiff and
24 the Subclass that contradicted these representations.

25 506. Defendant had a duty to disclose that the NOx reduction system in the Affected
26 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
27 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
28 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and

1 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
2 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
3 emission vehicles, efficient, and free from defects.

4 507. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
5 members.

6 508. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
7 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
8 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
9 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
10 direct and natural consequence of Defendant's misrepresentations and omissions.

11 509. Defendant's violations present a continuing risk to Plaintiff as well as to the general
12 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

13 510. Plaintiff and the other Subclass members sustained damages as a result of Defendant's
14 unlawful acts, and are therefore entitled to damages and other relief as provided under the
15 Connecticut UTPA.

16 511. Plaintiff also seeks court costs and attorneys' fees as a result of Defendant's violation
17 of the Connecticut UTPA as provided in Conn. Gen. Stat. Ann. § 42-110g(d). A copy of this
18 Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection
19 of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).

20 **COUNT II**

21 **FRAUDULENT NON-DISCLOSURE**
22 **(BASED ON CONNECTICUT LAW)**

23 512. Plaintiff incorporates by reference all preceding allegations as though fully set forth
24 herein.

25 513. Plaintiff brings this Count on behalf of the Connecticut Subclass against FCA.

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

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

6 515. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
7 advertising and other forms of communication, including standard and uniform material provided
8 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
9 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
10 properly when driven in normal usage.

11 516. Defendant knew these representations were false when made.

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

17 518. Defendant had a duty to disclose that the NOx reduction system in the Affected
18 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
19 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
20 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
21 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
22 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
23 emission vehicles, efficient, and free from defects.

24 519. As alleged in this Complaint, at all relevant times, Defendant has held out the
25 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
26 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
27 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
28 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a

1 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
2 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
3 making other disclosures about the emission system deceptive.

4 520. The truth about the defective emissions controls and Defendant’s manipulations of
5 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
6 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
7 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
8 members.

9 521. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
10 had no way of knowing that Defendant’s representations were false and/or misleading. As
11 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
12 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
13 true facts about the Affected Vehicles’ emissions.

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

21 523. Defendant’s false representations were material to consumers because they concerned
22 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
23 state laws and regulations regarding clean air and emissions, and also because the representations
24 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
25 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
26 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

27 524. Defendant had a duty to disclose the emissions defect, defective design of emissions
28 controls, and violations with respect to the Affected Vehicles because details of the true facts were

1 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
2 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
3 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
4 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
5 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
6 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
7 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
8 respect to compliance with federal and state clean air laws and emissions regulations, and
9 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
10 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
11 truth, but the entire truth. These omitted and concealed facts were material because they directly
12 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
13 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
14 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
15 or non-compliance, are material concerns to a consumer, including with respect to the emissions
16 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
17 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
18 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

24 526. Defendant still has not made full and adequate disclosures, and continues to defraud
25 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
26 of the Affected Vehicles.

27 527. Plaintiff and Subclass members were unaware of the omitted material facts referenced
28 herein, and they would not have acted as they did if they had known of the concealed and/or

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

7 528. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
8 members have sustained damage because they own vehicles that are diminished in value as a result
9 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
10 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
11 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
12 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
13 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
14 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
15 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
16 or would not have purchased or leased them at all.

17 529. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
18 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
19 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
20 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
21 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
22 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
23 vehicles.

24 530. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
25 amount to be proven at trial.

26 531. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
27 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
28 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct

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

3 **J. Claims Brought on Behalf of the Delaware Subclass**

4 **COUNT I**

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

7 532. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

8 533. Plaintiff brings this Count on behalf of the Delaware Subclass against FCA.

9 534. Defendant is a “person” within the meaning of 6 Del. Code § 2511(7).

10 535. The Delaware Consumer Fraud Act (“Delaware CFA”) prohibits the “act, use or
11 employment by any person of any deception, fraud, false pretense, false promise, misrepresentation,
12 or the concealment, suppression, or omission of any material fact with intent that others rely upon
13 such concealment, suppression, or omission, in connection with the sale, lease or advertisement of
14 any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby.”
15 6 Del. Code § 2513(a). In the course of Defendant’s business, Defendant willfully failed to disclose
16 and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
17 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
18 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
19 consumer would expect in light of Defendant’s advertising campaigns, and that the Affected
20 Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.
21 Accordingly, Defendant has engaged in deception, fraud, false pretense, false promise,
22 misrepresentation, or the concealment, suppression, or omission of any material fact with intent that
23 others rely upon such concealment, suppression, or omission, in connection with the sale, lease or
24 advertisement of the Affected Vehicles.

25 536. In the course of Defendant’s business, Defendant willfully failed to disclose and
26 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
27 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
28 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable

1 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
2 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
3 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
4 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
5 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
6 particular standard and quality when they are not; failing to reveal a material fact, the omission of
7 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
8 the consumer; making a representation of fact or statement of fact material to the transaction such
9 that a person reasonably believes the represented or suggested state of affairs to be other than it
10 actually is; and failing to reveal facts that are material to the transaction in light of representations of
11 fact made in a positive manner.

12 537. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
13 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
14 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
15 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
16 including NOx, as described above.

17 538. Plaintiff and Subclass members reasonably relied upon Defendant's false
18 misrepresentations. They had no way of knowing that Defendant's representations were false and
19 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
20 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own.

22 539. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

23 540. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
24 reasonable consumers.

25 541. Defendant intentionally and knowingly misrepresented material facts regarding the
26 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

27 542. Defendant knew or should have known that its conduct violated the Delaware CFA.
28

1 543. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
2 emissions systems manipulation because Defendant:

- 3 a. Possessed exclusive knowledge that it manipulated the emissions system in the
4 Affected Vehicles to turn off or limit effectiveness in normal driving
5 conditions;
- 6 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
7 c. Made incomplete representations that it manipulated the emissions system in
8 the Affected Vehicles to turn off or limit effectiveness in normal driving
9 conditions, while purposefully withholding material facts from Plaintiff and
10 the Subclass that contradicted these representations.

11 544. Defendant had a duty to disclose that the NOx reduction system in the Affected
12 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
13 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
14 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
15 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
16 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
17 emission vehicles, efficient, and free from defects.

18 545. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
19 members.

20 546. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
21 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
22 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
23 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
24 direct and natural consequence of Defendant’s misrepresentations and omissions.

25 547. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
26 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

27 548. Plaintiff seeks damages under the Delaware CFA for injury resulting from the direct
28 and natural consequences of Defendant’s unlawful conduct. *See, e.g., Stephenson v. Capano Dev.,*

1 *Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiff also seeks declaratory relief, attorneys' fees, and
2 any other just and proper relief available under the Delaware CFA.

3 549. Defendant engaged in gross, oppressive, or aggravated conduct justifying the
4 imposition of punitive damages.

5 **COUNT II**

6 **FRAUDULENT CONCEALMENT**
7 **(BASED ON DELAWARE LAW)**

8 550. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

9 551. Plaintiff brings this Count on behalf of the Delaware Subclass against FCA.

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

18 553. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
19 advertising and other forms of communication, including standard and uniform material provided
20 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
21 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
22 properly when driven in normal usage.

23 554. Defendant knew these representations were false when made.

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

1 556. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 557. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 558. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 559. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 560. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—one characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 561. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 562. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of its vehicles with respect to emissions, starting with
17 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

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

3 563. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that the Affected Vehicles were not
5 clean diesel vehicles and did not or could not comply with federal and state laws governing clean air
6 and emissions, which perception would hurt the brand's image and cost Defendant money, and it did
7 so at the expense of Plaintiff and Subclass members.

8 564. Defendant has still not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 565. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 566. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of the vehicles, and the serious issues engendered by
24 Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

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

7 568. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
8 amount to be proven at trial.

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

14 **K. Claims Brought on Behalf of the District of Columbia Subclass**

15 **COUNT I**

16 **VIOLATION OF THE CONSUMER PROTECTION**
17 **PROCEDURES ACT**
(D.C. CODE § 28-3901 ET SEQ.)

18 570. Plaintiff incorporates by reference all preceding allegations as though fully set forth
19 herein.

20 571. Plaintiff brings this Count on behalf of the D.C. Subclass against FCA.

21 572. Defendant is a "person" under the Consumer Protection Procedures Act ("District of
22 Columbia CPPA"), D.C. Code § 28-3901(a)(1).

23 573. Subclass members are "consumers," as defined by D.C. Code § 28-3901(1)(2), who
24 purchased or leased one or more Affected Vehicles.

25 574. Defendant's actions as set forth herein constitute "trade practices" under D.C. Code §
26 28-3901.

27 575. In the course of Defendant's business, Defendant willfully failed to disclose and
28 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited

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

14 576. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
15 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
17 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
18 including NOx, as described above.

19 577. Plaintiff and Subclass members reasonably relied upon Defendant's false
20 misrepresentations. They had no way of knowing that Defendant's representations were false and
21 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
22 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
23 their own.

24 578. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

25 579. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
26 reasonable consumers.

27 580. Defendant intentionally and knowingly misrepresented material facts regarding the
28 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

1 581. Defendant knew or should have known that its conduct violated the District of
2 Columbia CPPA.

3 582. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
4 emissions systems manipulation because Defendant:

- 5 a. Possessed exclusive knowledge that it manipulated the emissions system in the
6 Affected Vehicles to turn off or limit effectiveness in normal driving
7 conditions;
- 8 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 9 c. Made incomplete representations that it manipulated the emissions system in
10 the Affected Vehicles to turn off or limit effectiveness in normal driving
11 conditions, while purposefully withholding material facts from Plaintiff and
12 the Subclass that contradicted these representations.

13 583. Defendant had a duty to disclose that the NOx reduction system in the Affected
14 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
15 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
16 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
17 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
18 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
19 emission vehicles, efficient, and free from defects.

20 584. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
21 members.

22 585. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
23 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

24 586. As a direct and proximate result of Defendant’s violations of the District of Columbia
25 CPPA, Plaintiff and D.C. Subclass members have suffered injury in fact and/or actual damage.

26 587. Plaintiff and D.C. Subclass members are entitled to recover treble damages or \$1,500,
27 whichever is greater, punitive damages, reasonable attorneys’ fees, and any other relief the Court
28 deems proper, under D.C. Code § 28-3901.

1 588. Plaintiff seeks punitive damages against Defendant because Defendant's conduct
2 evidences malice and/or egregious conduct. Defendant maliciously and egregiously misrepresented
3 the safety, cleanliness, efficiency and reliability of the Affected Vehicles, deceived Subclass
4 members, and concealed material facts that only they knew, all to avoid the expense and public
5 relations nightmare of correcting their defective and environmentally dirty engines.

6 589. Defendant's unlawful conduct constitutes malice warranting punitive damages.

7 **COUNT II**

8 **FRAUDULENT CONCEALMENT**
9 **(BASED ON DISTRICT OF COLUMBIA LAW)**

10 590. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

11 591. This claim is brought on behalf of the District of Columbia Subclass against FCA.

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

20 593. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
21 advertising and other forms of communication, including standard and uniform material provided
22 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
23 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
24 properly when driven in normal usage.

25 594. Defendant knew these representations were false when made.

26 595. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
27 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
28 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's

1 advertising campaign, non-EPA-compliant, costly in that Plaintiff and other Subclass members had
2 to pay more for fuel than they reasonably expected, and unreliable because the NOx reduction
3 system in the Affected Vehicles turns off or is limited during normal driving conditions.

4 596. Defendant had a duty to disclose that the NOx reduction system in the Affected
5 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
6 defective, did not meet and maintain the advertised MPG rate, employed a “defeat device,” emitted
7 pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded
8 those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because
9 Plaintiff and the other Subclass members relied on Defendant’s material representations that the
10 Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from
11 defects.

12 597. As alleged in this Complaint, at all relevant times, Defendant has held out the
13 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
14 details about its EcoDiesel, but nonetheless, Defendant intentionally failed to disclose the important
15 facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal
16 driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “defeat
17 device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
18 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
19 making other disclosures about the emission system deceptive.

20 598. The truth about the defective emissions controls and Defendant’s manipulations of
21 those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the
22 “defeat device,” and non-compliance with EPA emissions requirements was known only to
23 Defendant; Plaintiff and the Subclass members did not know of these facts and Defendant actively
24 concealed these facts from Plaintiff and Subclass members.

25 599. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
26 had no way of knowing that Defendant’s representations were false and/or misleading. As
27 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
28

1 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
2 true facts about the Affected Vehicles' emissions.

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

10 601. Defendant's false representations were material to consumers because they concerned
11 the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with
12 applicable federal and state laws and regulations regarding clean air and emissions, and also because
13 the representations played a significant role in the value of the vehicles. As Defendant well knew, its
14 customers, including Plaintiff and Subclass members, highly valued that the vehicles they were
15 purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid
16 accordingly.

17 602. Defendant had a duty to disclose the emissions defect, defective design of emissions
18 controls, failure to meet and maintain the advertised MPG rate, and violations with respect to the
19 Affected Vehicles because details of the true facts were known and/or accessible only to Defendant,
20 because Defendant had exclusive knowledge as to such facts, and because Defendant knew these
21 facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Defendant
22 also had a duty to disclose because it made general affirmative representations about the qualities of
23 the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel*
24 *cars* and as compliant with all laws in each state, which were misleading, deceptive, and incomplete
25 without the disclosure of the additional facts set forth above regarding the actual emissions of the
26 vehicles, Defendant's actual philosophy with respect to compliance with federal and state clean air
27 laws and emissions regulations, and Defendant's actual practices with respect to the vehicles at issue.
28 Having volunteered to provide information to Plaintiff and Subclass members, Defendant had the

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

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

15 604. Defendant still has not made full and adequate disclosures, and continues to defraud
16 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
17 of the Affected Vehicles.

18 605. Plaintiff and Subclass members were unaware of the omitted material facts referenced
19 herein, and they would not have acted as they did if they had known of the concealed and/or
20 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
21 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
22 vehicles, or would have taken other affirmative steps in light of the information concealed from
23 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
24 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
25 members.

26 606. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
27 members have sustained damage because they own vehicles that are diminished in value as a result
28 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and fuel

1 efficiency and Defendant's failure to timely disclose the defect or defective design of the EcoDiesel
2 engine, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues
3 engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of
4 the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth
5 and compliance with applicable federal and state laws and regulations, and its failure to meet and
6 maintain the advertised MPG rate, Plaintiff and Subclass members who purchased or leased new or
7 certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or
8 leased them at all.

9 607. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
10 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
11 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
12 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
13 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
14 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
15 vehicles.

16 608. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
17 amount to be proven at trial.

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

23 **L. Claims Brought on Behalf of the Florida Subclass**

24 **COUNT I**

25 **VIOLATIONS OF THE FLORIDA UNFAIR AND DECEPTIVE TRADE**
26 **PRACTICES ACT**
(FLA. STAT. § 501.201 ET SEQ.)

27 610. Plaintiff incorporates by reference all preceding allegations as though fully set forth
28 herein.

1 611. Plaintiff brings this Count on behalf of the Florida Subclass against FCA.

2 612. Plaintiff and Subclass members are “consumers” within the meaning of Florida Unfair
3 and Deceptive Trade Practices Act (“Florida UDTPA”), Fla. Stat. § 501.203(7).

4 613. Defendant engaged in “trade or commerce” within the meaning of Fla. Stat.
5 § 501.203(8).

6 614. Florida’s Deceptive and Unfair Trade Practices Act prohibits “[u]nfair methods of
7 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct
8 of any trade or commerce.” Fla. Stat. § 501.204(1). Defendant participated in unfair and deceptive
9 trade practices that violated the Florida UDTPA as described herein. In the course of Defendant’s
10 business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system
11 in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected
12 Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit
13 far more pollution than a reasonable consumer would expect in light of Defendant’s advertising
14 campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including
15 NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition,
16 unconscionable acts or practices, and unfair or deceptive acts or practices as defined in Fla. Stat.
17 § 501.204(1). Defendant’s conduct offends established public policy, is immoral, unethical,
18 oppressive, unscrupulous, or substantially injurious to consumers, and is likely to mislead
19 consumers.

20 615. In the course of Defendant’s business, Defendant willfully failed to disclose and
21 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
22 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
23 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
24 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
25 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
26 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
27 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
28 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a

1 particular standard and quality when they are not; failing to reveal a material fact, the omission of
2 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
3 the consumer; making a representation of fact or statement of fact material to the transaction such
4 that a person reasonably believes the represented or suggested state of affairs to be other than it
5 actually is; and failing to reveal facts that are material to the transaction in light of representations of
6 fact made in a positive manner.

7 616. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
8 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
9 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
10 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
11 including NOx, as described above.

12 617. Plaintiff and Subclass members reasonably relied upon Defendant's false
13 misrepresentations. They had no way of knowing that Defendant's representations were false and
14 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
15 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
16 their own.

17 618. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

18 619. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
19 reasonable consumers.

20 620. Defendant intentionally and knowingly misrepresented material facts regarding the
21 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

22 621. Defendant knew or should have known that its conduct violated the Florida UDTPA.

23 622. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
24 emissions systems manipulation because Defendant:

- 25 a. Possessed exclusive knowledge that it manipulated the emissions system in the
26 Affected Vehicles to turn off or limit effectiveness in normal driving
27 conditions;
28 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or

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

5 623. Defendant had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
7 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
8 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
9 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
10 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
11 emission vehicles, efficient, and free from defects.

12 624. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
13 members.

14 625. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
15 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
16 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
17 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
18 direct and natural consequence of Defendant’s misrepresentations and omissions.

19 626. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
20 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

21 627. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 **COUNT II**

24 **FRAUDULENT CONCEALMENT**
25 **(BASED ON FLORIDA LAW)**

26 628. Plaintiff incorporates by reference all preceding allegations as though fully set forth
27 herein.

28 629. Plaintiff brings this Count on behalf of the Florida Subclass against FCA.

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

9 631. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
10 advertising and other forms of communication, including standard and uniform material provided
11 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
12 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
13 properly when driven in normal usage.

14 632. Defendant knew these representations were false when made.

15 633. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
16 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
17 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant’s
18 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
19 Affected Vehicles turns off or is limited during normal driving conditions.

20 634. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 635. As alleged in this Complaint, at all relevant times, Defendant has held out the
28 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain

1 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
2 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
3 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
4 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
5 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
6 making other disclosures about the emission system deceptive.

7 636. The truth about the defective emissions controls and Defendant’s manipulations of
8 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
9 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
10 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
11 members.

12 637. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
13 had no way of knowing that Defendant’s representations were false and/or misleading. As
14 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
15 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
16 true facts about the Affected Vehicles’ emissions.

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

24 639. Defendant’s false representations were material to consumers because they concerned
25 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
26 state laws and regulations regarding clean air and emissions, and also because the representations
27 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
28

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

3 640. Defendant had a duty to disclose the emissions defect, defective design of emissions
4 controls, and violations with respect to the Affected Vehicles because details of the true facts were
5 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
6 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
7 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
8 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
9 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
10 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
11 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
12 respect to compliance with federal and state clean air laws and emissions regulations, and
13 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
14 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
15 truth, but the entire truth. These omitted and concealed facts were material because they directly
16 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
17 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
18 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
19 or non-compliance, are material concerns to a consumer, including with respect to the emissions
20 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
21 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
22 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

1 642. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 643. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 644. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
19 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
20 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
21 or would not have purchased or leased them at all.

22 645. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
23 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
24 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
25 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
26 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
27 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
28 vehicles.

1 646. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
2 amount to be proven at trial.

3 647. Defendant’s acts were done wantonly, maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiff’s and Subclass members’ rights and the
5 representations that Defendant made to them, in order to enrich Defendant. Defendant’s conduct
6 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
7 future, which amount is to be determined according to proof.

8 **M. Claims Brought on Behalf of the Georgia Subclass**

9 **COUNT I**

10 **VIOLATION OF GEORGIA’S FAIR BUSINESS PRACTICES ACT**
11 **(GA. CODE ANN. § 10-1-390 ET SEQ.)**

12 648. Plaintiff incorporates by reference all preceding allegations as though fully set forth
13 herein.

14 649. This claim is made on behalf of the Georgia Subclass against FCA.

15 650. The Georgia Fair Business Practices Act (“Georgia FBPA”) declares “[u]nfair or
16 deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in
17 trade or commerce” to be unlawful, Ga. Code. Ann. § 10-1-393(a), including, but not limited to,
18 “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses,
19 benefits, or quantities that they do not have,” “[r]epresenting that goods or services are of a particular
20 standard, quality, or grade ... if they are of another,” and “[a]dvertising goods or services with intent
21 not to sell them as advertised.” Ga. Code. Ann. § 10-1-393(b). Plaintiff will make a demand in
22 satisfaction of Ga. Code. Ann. § 10-1-399(b), and may amend this Complaint to assert claims under
23 the Georgia FBPA once the required notice period has elapsed. This paragraph is included for
24 purposes of notice only and is not intended to actually assert a claim under the Georgia FBPA.

25 **COUNT II**

26 **FRAUDULENT CONCEALMENT**
27 **(BASED ON GEORGIA LAW)**

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

1 652. This claim is brought on behalf of the Georgia Subclass against FCA.

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

10 654. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
11 advertising and other forms of communication, including standard and uniform material provided
12 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
13 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
14 properly when driven in normal usage.

15 655. Defendant knew these representations were false when made.

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

21 657. Defendant had a duty to disclose that the NOx reduction system in the Affected
22 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
23 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
24 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
25 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
26 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
27 emission vehicles, efficient, and free from defects.

1 658. As alleged in this Complaint, at all relevant times, Defendant has held out the
2 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
3 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
4 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
5 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
6 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
7 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
8 making other disclosures about the emission system deceptive.

9 659. The truth about the defective emissions controls and Defendant’s manipulations of
10 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
11 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
12 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
13 members.

14 660. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
15 had no way of knowing that Defendant’s representations were false and/or misleading. As
16 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
17 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
18 true facts about the Affected Vehicles’ emissions.

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

26 662. Defendant’s false representations were material to consumers because they concerned
27 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
28 state laws and regulations regarding clean air and emissions, and also because the representations

1 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
2 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
3 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

4 663. Defendant had a duty to disclose the emissions defect, defective design of emissions
5 controls, and violations with respect to the Affected Vehicles because details of the true facts were
6 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
7 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
8 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
9 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
10 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
11 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
12 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
13 respect to compliance with federal and state clean air laws and emissions regulations, and
14 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
15 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
16 truth, but the entire truth. These omitted and concealed facts were material because they directly
17 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
18 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
19 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
20 or non-compliance, are material concerns to a consumer, including with respect to the emissions
21 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
22 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
23 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

1 665. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 666. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 667. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
19 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
20 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
21 or would not have purchased or leased them at all.

22 668. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
23 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
24 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
25 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
26 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
27 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
28 vehicles.

1 669. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
2 amount to be proven at trial.

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

8 **N. Claims Brought on Behalf of the Hawaii Subclass**

9 **COUNT I**

10 **UNFAIR AND DECEPTIVE ACTS IN VIOLATION OF HAWAII LAW**
11 **(HAW. REV. STAT. § 480 ET SEQ.)**

12 556. Plaintiff incorporates by reference all preceding allegations as though fully set forth
13 herein.

14 557. This claim is brought on behalf of the Hawaii Subclass against FCA.

15 569. Defendant is a "person" under Haw. Rev. Stat. § 480-1.

16 570. Subclass members are "consumer[s]" as defined by Haw. Rev. Stat. § 480-1, who
17 purchased or leased one or more Affected Vehicles.

18 571. Defendant's acts or practices as set forth above occurred in the conduct of trade or
19 commerce.

20 572. Haw. Rev. Stat. § 480-2(a) prohibits "unfair methods of competition and unfair or
21 deceptive acts or practices in the conduct of any trade or commerce."

22 671. In the course of Defendant's business, Defendant willfully failed to disclose and
23 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
24 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
25 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
26 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
27 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
28 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or

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

9 672. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
10 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
12 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
13 including NOx, as described above.

14 673. Plaintiff and Subclass members reasonably relied upon Defendant's false
15 misrepresentations. They had no way of knowing that Defendant's representations were false and
16 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
17 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
18 their own.

19 674. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

20 675. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
21 reasonable consumers.

22 676. Defendant intentionally and knowingly misrepresented material facts regarding the
23 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

24 677. Defendant knew or should have known that its conduct violated Haw. Rev. Stat. § 480
25 *et seq.*

26 678. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
27 emissions systems manipulation because Defendant:
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- 1 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 2 Affected Vehicles to turn off or limit effectiveness in normal driving
- 3 conditions;
- 4 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 5 c. Made incomplete representations that it manipulated the emissions system in
- 6 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 7 conditions, while purposefully withholding material facts from Plaintiff and
- 8 the Subclass that contradicted these representations.

9 679. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 680. Pursuant to Haw. Rev. Stat. § 480-13, Plaintiff and the Hawaii Subclass seek
17 monetary relief against Defendant measured as the greater of (a) \$1,000 and (b) threefold actual
18 damages in an amount to be determined at trial.

19 681. Under Haw. Rev. Stat. § 480-13.5, Plaintiff seeks an additional award against
20 Defendant of up to \$10,000 for each violation directed at a Hawaiian elder. Defendant knew or
21 should have known that its conduct was directed to one or more Subclass members who are elders.
22 Defendant’s conduct caused one or more of these elders to suffer a substantial loss of property set
23 aside for retirement or for personal or family care and maintenance, or assets essential to the health
24 or welfare of the elder. One or more Hawaii Subclass members who are elders are substantially
25 more vulnerable to Defendant’s conduct because of age, poor health or infirmity, impaired
26 understanding, restricted mobility, or disability, and each of them suffered substantial physical,
27 emotional, or economic damage resulting from Defendant’s conduct.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON HAWAII LAW)**

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682. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

683. This claim is brought on behalf of the Hawaii Subclass against FCA.

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

685. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was 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.

686. Defendant knew these representations were false when made.

687. The Affected Vehicles purchased or leased by Plaintiff 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 Defendant's 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.

688. Defendant 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 the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 689. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 690. The truth about the defective emissions controls and Defendant’s manipulations of
14 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 691. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
19 had no way of knowing that Defendant’s representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles’ emissions.

23 692. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
28

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

3 693. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 694. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

6 696. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 697. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 698. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 699. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
5 vehicles.

6 700. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
7 amount to be proven at trial.

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

13 **O. Claims Brought on Behalf of the Idaho Subclass**

14 **COUNT I**

15 **VIOLATIONS OF THE IDAHO CONSUMER PROTECTION ACT**
16 **(IDAHO CODE § 48-601 ET SEQ.)**

17 702. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

18 703. Plaintiff brings this Count on behalf of the Idaho Subclass against FCA.

19 704. Defendant is a "person" under the Idaho Consumer Protection Act ("Idaho CPA"),
20 Idaho Code § 48-602(1).

21 705. Defendant's acts or practices as set forth above occurred in the conduct of "trade" or
22 "commerce" under Idaho Code § 48-602(2).

23 706. Idaho Code § 48-603 prohibits the following conduct in trade or commerce: engaging
24 in any act or practice which is otherwise misleading, false, or deceptive to the consumer; and
25 engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as
26 provided in section 48-603C.

27 707. In the course of Defendant's business, Defendant willfully failed to disclose and
28 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited

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

14 708. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
15 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
17 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
18 including NOx, as described above.

19 709. Plaintiff and Subclass members reasonably relied upon Defendant's false
20 misrepresentations. They had no way of knowing that Defendant's representations were false and
21 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
22 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
23 their own.

24 710. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

25 711. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
26 reasonable consumers.

27 712. Defendant intentionally and knowingly misrepresented material facts regarding the
28 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

1 713. Defendant knew or should have known that its conduct violated the Idaho CPA.

2 714. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
3 emissions systems manipulation because Defendant:

- 4 a. Possessed exclusive knowledge that it manipulated the emissions system in the
5 Affected Vehicles to turn off or limit effectiveness in normal driving
6 conditions;
- 7 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
8 c. Made incomplete representations that it manipulated the emissions system in
9 the Affected Vehicles to turn off or limit effectiveness in normal driving
10 conditions, while purposefully withholding material facts from Plaintiff and
11 the Subclass that contradicted these representations.

12 715. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 716. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
20 members.

21 717. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
22 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
23 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
24 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
25 direct and natural consequence of Defendant’s misrepresentations and omissions.

26 718. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
27 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

28

1 719. Plaintiff also seeks attorneys' fees and any other just and proper relief available under
2 the Idaho CPA.

3 720. Plaintiff also seeks punitive damages against Defendant because Defendant's conduct
4 evidences an extreme deviation from reasonable standards. Defendant's unlawful conduct
5 constitutes malice, oppression, and fraud warranting punitive damages.

6 **COUNT II**

7 **FRAUDULENT CONCEALMENT**
8 **(BASED ON IDAHO LAW)**

9 721. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

10 722. This claim is brought on behalf of the Idaho Subclass against FCA.

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

19 724. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
20 advertising and other forms of communication, including standard and uniform material provided
21 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
22 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
23 properly when driven in normal usage.

24 725. Defendant knew these representations were false when made.

25 726. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
26 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
27 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
28

1 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
2 Affected Vehicles turns off or is limited during normal driving conditions.

3 727. Defendant had a duty to disclose that the NOx reduction system in the Affected
4 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
5 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
6 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
7 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
8 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
9 emission vehicles, efficient, and free from defects.

10 728. As alleged in this Complaint, at all relevant times, Defendant has held out the
11 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
12 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
13 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
14 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
15 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
16 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
17 making other disclosures about the emission system deceptive.

18 729. The truth about the defective emissions controls and Defendant’s manipulations of
19 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
20 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
21 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
22 members.

23 730. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
24 had no way of knowing that Defendant’s representations were false and/or misleading. As
25 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
26 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
27 true facts about the Affected Vehicles’ emissions.

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

8 732. Defendant’s false representations were material to consumers because they concerned
9 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
10 state laws and regulations regarding clean air and emissions, and also because the representations
11 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
12 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
13 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

14 733. Defendant had a duty to disclose the emissions defect, defective design of emissions
15 controls, and violations with respect to the Affected Vehicles because details of the true facts were
16 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
17 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
18 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
19 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
20 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
21 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
22 forth above regarding the actual emissions of the vehicles, Defendant’s actual philosophy with
23 respect to compliance with federal and state clean air laws and emissions regulations, and
24 Defendant’s actual practices with respect to the vehicles at issue. Having volunteered to provide
25 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
26 truth, but the entire truth. These omitted and concealed facts were material because they directly
27 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
28 Whether a manufacturer’s products pollute, comply with federal and state clean air laws and

1 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
2 or non-compliance, are material concerns to a consumer, including with respect to the emissions
3 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
4 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
5 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

11 735. Defendant still has not made full and adequate disclosures, and continues to defraud
12 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
13 of the Affected Vehicles.

14 736. Plaintiff and Subclass members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
17 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
18 vehicles, or would have taken other affirmative steps in light of the information concealed from
19 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
20 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
21 members.

22 737. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
23 members have sustained damage because they own vehicles that are diminished in value as a result
24 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
25 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
26 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
27 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
28 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and

1 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
2 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
3 or would not have purchased or leased them at all.

4 738. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
5 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
6 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
7 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
8 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
9 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
10 vehicles.

11 739. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
12 amount to be proven at trial.

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

18 **P. Claims Brought on Behalf of the Illinois Subclass**

19 **COUNT I**

20 **VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND**
21 **DECEPTIVE BUSINESS PRACTICES ACT**
22 **(815 ILL. COMP. STAT. 505/1 ET SEQ. AND**
720 ILL. COMP. STAT. 295/1A)

23 741. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

24 742. This claim is brought on behalf of the Illinois Subclass against FCA.

25 743. Defendant is a "person" as that term is defined in 815 Ill. Comp. Stat. 505/1(c).

26 744. Plaintiff and the Subclass members are "consumers" as that term is defined in 815 Ill.
27 Comp. Stat. 505/1(e).

1 745. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”)
2 prohibits “unfair or deceptive acts or practices, including but not limited to the use or employment of
3 any deception, fraud, false pretense, false promise, misrepresentation or the concealment,
4 suppression, or omission of any material fact, with intent that others rely upon the concealment,
5 suppression, or omission of such material fact ... in the conduct of trade or commerce ... whether
6 any person has in fact been misled, deceived or damaged thereby.” 815 Ill. Comp. Stat. 505/2.

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

22 747. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
23 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
24 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
25 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
26 including NOx, as described above.

27 748. Plaintiff and Subclass members reasonably relied upon Defendant’s false
28 misrepresentations. They had no way of knowing that Defendant’s representations were false and

1 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
2 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
3 their own.

4 749. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

5 750. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
6 reasonable consumers.

7 751. Defendant intentionally and knowingly misrepresented material facts regarding the
8 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

9 752. Defendant knew or should have known that its conduct violated the Illinois CFA.

10 753. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
11 emissions systems manipulation because Defendant:

- 12 a. Possessed exclusive knowledge that it manipulated the emissions system in the
13 Affected Vehicles to turn off or limit effectiveness in normal driving
14 conditions;
- 15 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 16 c. Made incomplete representations that it manipulated the emissions system in
17 the Affected Vehicles to turn off or limit effectiveness in normal driving
18 conditions, while purposefully withholding material facts from Plaintiff and
19 the Subclass that contradicted these representations.

20 754. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 755. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
28 members.

1 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
2 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
3 properly when driven in normal usage.

4 764. Defendant knew these representations were false when made.

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

10 766. Defendant had a duty to disclose that the NOx reduction system in the Affected
11 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
12 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
13 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
14 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
15 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
16 emission vehicles, efficient, and free from defects.

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

25 768. The truth about the defective emissions controls and Defendant's manipulations of
26 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
27 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
28

1 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
2 members.

3 769. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
4 had no way of knowing that Defendant's representations were false and/or misleading. As
5 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
6 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
7 true facts about the Affected Vehicles' emissions.

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

15 771. Defendant's false representations were material to consumers because they concerned
16 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
17 state laws and regulations regarding clean air and emissions, and also because the representations
18 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
19 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
20 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

21 772. Defendant had a duty to disclose the emissions defect, defective design of emissions
22 controls, and violations with respect to the Affected Vehicles because details of the true facts were
23 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
24 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
25 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
26 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
27 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
28 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set

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

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

18 774. Defendant still has not made full and adequate disclosures, and continues to defraud
19 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
20 of the Affected Vehicles.

21 775. Plaintiff and Subclass members were unaware of the omitted material facts referenced
22 herein, and they would not have acted as they did if they had known of the concealed and/or
23 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
24 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
25 vehicles, or would have taken other affirmative steps in light of the information concealed from
26 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
27 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
28 members.

1 776. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
2 members have sustained damage because they own vehicles that are diminished in value as a result
3 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
4 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
5 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
6 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
7 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
8 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
9 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
10 or would not have purchased or leased them at all.

11 777. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
12 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
13 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
14 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
15 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
16 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
17 vehicles.

18 778. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
19 amount to be proven at trial.

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

1 **Q. Claims Brought on Behalf of the Kansas Subclass**

2 **COUNT I**

3 **VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT**
4 **(KAN. STAT. ANN. § 50-623 ET SEQ.)**

5 780. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

6 781. Plaintiff brings this Count on behalf of the Kansas Subclass against FCA.

7 645. Defendant is a “supplier” under the Kansas Consumer Protection Act (“Kansas
8 CPA”), Kan. Stat. Ann. § 50-624(l).

9 750. Kansas Subclass members are “consumers,” within the meaning of Kan. Stat. Ann. §
10 50-624(b), who purchased or leased one or more Affected Vehicles.

11 751. The sale of the Affected Vehicles to the Kansas Subclass members was a “consumer
12 transaction” within the meaning of Kan. Stat. Ann. § 50-624(c).

13 752. The Kansas CPA states “[n]o supplier shall engage in any deceptive act or practice in
14 connection with a consumer transaction,” Kan. Stat. Ann. § 50-626(a), and that deceptive acts or
15 practices include: (1) knowingly making representations or with reason to know that “(A) Property or
16 services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or
17 quantities that they do not have;” and “(D) property or services are of particular standard, quality,
18 grade, style or model, if they are of another which differs materially from the representation;” “(2)
19 the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or
20 ambiguity as to a material fact;” and “(3) the willful failure to state a material fact, or the willful
21 concealment, suppression, or omission of a material fact.” The Kansas CPA also provides that “[n]o
22 supplier shall engage in any unconscionable act or practice in connection with a consumer
23 transaction.” Kan. Stat. Ann. § 50-627(a).

24 753. In the course of Defendant’s business, Defendant willfully failed to disclose and
25 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
26 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
27 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
28 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles

1 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
2 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
3 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
4 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
5 particular standard and quality when they are not; failing to reveal a material fact, the omission of
6 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
7 the consumer; making a representation of fact or statement of fact material to the transaction such
8 that a person reasonably believes the represented or suggested state of affairs to be other than it
9 actually is; and failing to reveal facts that are material to the transaction in light of representations of
10 fact made in a positive manner.

11 782. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
12 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
14 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
15 including NOx, as described above.

16 783. Plaintiff and Subclass members reasonably relied upon Defendant's false
17 misrepresentations. They had no way of knowing that Defendant's representations were false and
18 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
19 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
20 their own.

21 784. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

22 785. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
23 reasonable consumers.

24 786. Defendant intentionally and knowingly misrepresented material facts regarding the
25 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

26 787. Defendant knew or should have known that its conduct violated the Kansas CPA.

27 788. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
28 emissions systems manipulation because Defendant:

- 1 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 2 Affected Vehicles to turn off or limit effectiveness in normal driving
- 3 conditions;
- 4 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 5 c. Made incomplete representations that it manipulated the emissions system in
- 6 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 7 conditions, while purposefully withholding material facts from Plaintiff and
- 8 the Subclass that contradicted these representations.

9 789. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 790. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
17 members.

18 791. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
19 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
20 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
21 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
22 direct and natural consequence of Defendant’s misrepresentations and omissions.

23 792. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
24 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

25 754. Pursuant to Kan. Stat. Ann. § 50-634, Plaintiff and the Kansas Subclass seek
26 monetary relief against Defendant measured as the greater of (a) actual damages in an amount to be
27 determined at trial and (b) statutory damages in the amount of \$10,000 for Plaintiff and each Kansas
28 Subclass member.

1 799. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 800. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 801. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 802. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 803. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 804. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 805. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
17 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

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

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

8 807. Defendant still has not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 808. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 809. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
24 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

1 810. The value of Plaintiff’s and Subclass members’ vehicles has diminished as a result of
2 Defendant’s fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
3 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
4 requirements, all of which has greatly tarnished Defendant’s brand name, which is attached to
5 Plaintiff’s and Subclass members’ vehicles, and made any reasonable consumer reluctant to purchase
6 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
7 vehicles.

8 811. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
9 amount to be proven at trial.

10 812. Defendant’s acts were done wantonly, maliciously, oppressively, deliberately, with
11 intent to defraud, and in reckless disregard of Plaintiff’s and Subclass members’ rights and the
12 representations that Defendant made to them, in order to enrich Defendant. Defendant’s conduct
13 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
14 future, which amount is to be determined according to proof.

15 **R. Claims Brought on Behalf of the Kentucky Subclass**

16 **COUNT I**

17 **VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT**
18 **(KY. REV. STAT. ANN. § 367.110 ET SEQ.)**

19 813. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

20 814. Plaintiff brings this Count on behalf of the Kentucky Subclass against FCA.

21 815. Defendant, Plaintiff, and each member of the Kentucky Subclass is a “person” within
22 the meaning of the Ky. Rev. Stat. Ann. § 367.110(1).

23 816. Defendant engaged in “trade” or “commerce” within the meaning of Ky. Rev. Stat.
24 Ann. § 367.110(2).

25 817. The Kentucky Consumer Protection Act (“Kentucky CPA”) makes unlawful “[u]nfair,
26 false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” Ky. Rev.
27 Stat. Ann. § 367.170(1). In the course of Defendant’s business, Defendant willfully failed to disclose
28 and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited

1 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
2 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
3 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
4 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
5 Defendant engaged in deceptive business practices prohibited by the Kentucky CPA.

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

21 819. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above.

26 820. Plaintiff and Subclass members reasonably relied upon Defendant's false
27 misrepresentations. They had no way of knowing that Defendant's representations were false and
28 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 821. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 822. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 823. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 824. Defendant knew or should have known that its conduct violated the Kentucky CPA.

9 825. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 826. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 827. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1 828. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
2 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
3 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
4 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
5 direct and natural consequence of Defendant's misrepresentations and omissions.

6 829. Defendant's violations present a continuing risk to Plaintiff as well as to the general
7 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

8 830. Pursuant to Ky. Rev. Stat. Ann. § 367.220, Plaintiff and the Subclass seek to recover
9 actual damages in an amount to be determined at trial; declaratory relief; attorneys' fees; and any
10 other just and proper relief available under Ky. Rev. Stat. Ann. § 367.220.

11 **COUNT II**

12 **FRAUD BY OMISSION**
13 **(BASED ON KENTUCKY LAW)**

14 831. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

15 832. This claim is brought on behalf of the Kentucky Subclass against FCA.

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

24 834. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
25 advertising and other forms of communication, including standard and uniform material provided
26 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
27 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
28 properly when driven in normal usage.

1 835. Defendant knew these representations were false when made.

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

7 837. Defendant had a duty to disclose that the NOx reduction system in the Affected
8 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
9 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
10 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
11 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
12 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
13 emission vehicles, efficient, and free from defects.

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

22 839. The truth about the defective emissions controls and Defendant's manipulations of
23 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
24 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
25 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
26 members.

27 840. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
28 had no way of knowing that Defendant's representations were false and/or misleading. As

1 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
3 true facts about the Affected Vehicles' emissions.

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

11 842. Defendant's false representations were material to consumers because they concerned
12 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
13 state laws and regulations regarding clean air and emissions, and also because the representations
14 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
15 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
16 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

17 843. Defendant had a duty to disclose the emissions defect, defective design of emissions
18 controls, and violations with respect to the Affected Vehicles because details of the true facts were
19 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
20 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
21 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
22 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
23 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
24 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
25 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
26 respect to compliance with federal and state clean air laws and emissions regulations, and
27 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
28 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial

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

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

14 845. Defendant still has not made full and adequate disclosures, and continues to defraud
15 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
16 of the Affected Vehicles.

17 846. Plaintiff and Subclass members were unaware of the omitted material facts referenced
18 herein, and they would not have acted as they did if they had known of the concealed and/or
19 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
20 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
21 vehicles, or would have taken other affirmative steps in light of the information concealed from
22 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
23 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
24 members.

25 847. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
26 members have sustained damage because they own vehicles that are diminished in value as a result
27 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
28 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the

1 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
2 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
3 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
4 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
5 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
6 or would not have purchased or leased them at all.

7 848. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
8 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
9 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
10 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
11 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
12 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
13 vehicles.

14 849. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
15 amount to be proven at trial.

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

21 **S. Claims Brought on Behalf of the Louisiana Subclass**

22 **COUNT I**

23 **VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND**
24 **CONSUMER PROTECTION LAW**
(LA. STAT. ANN. § 51:1401 ET SEQ.)

25 851. Plaintiff incorporates by reference all preceding allegations as though fully set forth
26 herein.

27 852. This claim is brought only on behalf of members of the Louisiana Subclass against
28 FCA.

1 689. Defendant, Plaintiff, and Louisiana Subclass members are “persons” within the
2 meaning of the La. Stat. Ann. § 51:1402(8).

3 836. Plaintiff and Louisiana Subclass members are “consumers” within the meaning of La.
4 Stat. Ann. § 51:1402(1).

5 837. Defendant engaged in “trade” or “commerce” within the meaning of La. Stat. Ann.
6 § 51:1402(9).

7 838. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana
8 CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” La.
9 Stat. Ann. § 51:1405(A).

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

25 854. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
26 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
27 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
28

1 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
2 including NOx, as described above.

3 855. Plaintiff and Subclass members reasonably relied upon Defendant's false
4 misrepresentations. They had no way of knowing that Defendant's representations were false and
5 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
6 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own.

8 856. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

9 857. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
10 reasonable consumers.

11 858. Defendant intentionally and knowingly misrepresented material facts regarding the
12 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

13 859. Defendant knew or should have known that its conduct violated the Louisiana CPL.

14 860. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
15 emissions systems manipulation because Defendant:

- 16 a. Possessed exclusive knowledge that it manipulated the emissions system in the
17 Affected Vehicles to turn off or limit effectiveness in normal driving
18 conditions;
- 19 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 20 c. Made incomplete representations that it manipulated the emissions system in
21 the Affected Vehicles to turn off or limit effectiveness in normal driving
22 conditions, while purposefully withholding material facts from Plaintiff and
23 the Subclass that contradicted these representations.

24 861. Defendant had a duty to disclose that the NOx reduction system in the Affected
25 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
26 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
27 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
28 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on

1 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
2 emission vehicles, efficient, and free from defects.

3 862. As a direct and proximate result of Defendant's violations of the Louisiana CPL,
4 Plaintiff and the Louisiana Subclass have suffered injury in fact and/or actual damage.

5 863. Pursuant to La. Stat. Ann. § 51:1409, Plaintiff and the Louisiana Subclass seek to
6 recover actual damages in an amount to be determined at trial; treble damages for Defendant's
7 knowing violations of the Louisiana CPL; an order enjoining Defendant's unfair, unlawful, and/or
8 deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available
9 under La. Stat. Ann. § 51:1409.

10 **COUNT II**

11 **FRAUDULENT CONCEALMENT**
12 **(BASED ON LOUISIANA LAW)**

13 864. Plaintiff incorporates by reference all preceding allegations as though fully set forth
14 herein.

15 865. This claim is brought on behalf of the Louisiana Subclass against FCA.

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

24 867. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
25 advertising and other forms of communication, including standard and uniform material provided
26 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
27 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
28 properly when driven in normal usage.

1 868. Defendant knew these representations were false when made.

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

7 870. Defendant had a duty to disclose that the NOx reduction system in the Affected
8 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
9 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
10 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
11 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
12 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
13 emission vehicles, efficient, and free from defects.

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

22 872. The truth about the defective emissions controls and Defendant's manipulations of
23 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
24 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
25 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
26 members.

27 873. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
28 had no way of knowing that Defendant's representations were false and/or misleading. As

1 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
3 true facts about the Affected Vehicles' emissions.

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

11 875. Defendant's false representations were material to consumers because they concerned
12 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
13 state laws and regulations regarding clean air and emissions, and also because the representations
14 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
15 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
16 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

17 876. Defendant had a duty to disclose the emissions defect, defective design of emissions
18 controls, and violations with respect to the Affected Vehicles because details of the true facts were
19 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
20 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
21 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
22 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
23 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
24 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
25 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
26 respect to compliance with federal and state clean air laws and emissions regulations, and
27 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
28 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial

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

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

14 878. Defendant still has not made full and adequate disclosures, and continues to defraud
15 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
16 of the Affected Vehicles.

17 879. Plaintiff and Subclass members were unaware of the omitted material facts referenced
18 herein, and they would not have acted as they did if they had known of the concealed and/or
19 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
20 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
21 vehicles, or would have taken other affirmative steps in light of the information concealed from
22 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
23 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
24 members.

25 880. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
26 members have sustained damage because they own vehicles that are diminished in value as a result
27 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
28 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the

1 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
2 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
3 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
4 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
5 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
6 or would not have purchased or leased them at all.

7 881. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
8 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
9 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
10 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
11 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
12 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
13 vehicles.

14 882. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
15 amount to be proven at trial.

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

21 **T. Claims Brought on Behalf of the Maine Subclass**

22 **COUNT I**

23 **VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT**
24 **(ME. REV. STAT. ANN. TIT. 5, § 205-A ET SEQ.)**

25 884. Plaintiff incorporates by reference all preceding allegations as though fully set forth
26 herein.

27 885. This claim is brought on behalf of the Maine Subclass against FCA.

1 886. Plaintiff intends to assert a claim under the Maine Unfair Trade Practices Act (“Maine
2 UTPA”) which makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or
3 practices in the conduct of any trade or commerce.” Me. Rev. Stat. Ann. tit. 5, § 207. Plaintiff will
4 make a demand in satisfaction of Me. Rev. Stat. Ann. tit. 5, § 213(A), and may amend this
5 Complaint to assert claims under the Maine UTPA once the required 30 days have elapsed. This
6 paragraph is included for purposes of notice only and is not intended to actually assert a claim under
7 the Maine UTPA.

8 **COUNT II**

9 **FRAUDULENT CONCEALMENT**
10 **(BASED ON MAINE LAW)**

11 887. Plaintiff incorporates by reference all preceding allegations as though fully set forth
12 herein.

13 888. This claim is brought on behalf of the Maine Subclass against FCA.

14 889. Defendant intentionally concealed that the NO_x reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
16 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
17 emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s
18 advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-
19 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
20 and denied Plaintiff and the other Subclass members information that is highly relevant to their
21 purchasing decision.

22 890. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
23 advertising and other forms of communication, including standard and uniform material provided
24 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
25 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
26 properly when driven in normal usage.

27 891. Defendant knew these representations were false when made.

1 892. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
2 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
3 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant’s
4 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
5 Affected Vehicles turns off or is limited during normal driving conditions.

6 893. Defendant had a duty to disclose that the NOx reduction system in the Affected
7 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
8 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
9 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
10 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
11 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
12 emission vehicles, efficient, and free from defects.

13 894. As alleged in this Complaint, at all relevant times, Defendant has held out the
14 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
15 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
16 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
17 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
18 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
19 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
20 making other disclosures about the emission system deceptive.

21 895. The truth about the defective emissions controls and Defendant’s manipulations of
22 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
23 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
24 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
25 members.

26 896. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
27 had no way of knowing that Defendant’s representations were false and/or misleading. As
28 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on

1 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
2 true facts about the Affected Vehicles' emissions.

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

10 898. Defendant's false representations were material to consumers because they concerned
11 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
12 state laws and regulations regarding clean air and emissions, and also because the representations
13 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
14 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
15 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

16 899. Defendant had a duty to disclose the emissions defect, defective design of emissions
17 controls, and violations with respect to the Affected Vehicles because details of the true facts were
18 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
19 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
20 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
21 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
22 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
23 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
24 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
25 respect to compliance with federal and state clean air laws and emissions regulations, and
26 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
27 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
28 truth, but the entire truth. These omitted and concealed facts were material because they directly

1 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
2 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
3 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
4 or non-compliance, are material concerns to a consumer, including with respect to the emissions
5 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
6 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
7 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

13 901. Defendant still has not made full and adequate disclosures, and continues to defraud
14 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
15 of the Affected Vehicles.

16 902. Plaintiff and Subclass members were unaware of the omitted material facts referenced
17 herein, and they would not have acted as they did if they had known of the concealed and/or
18 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
19 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
20 vehicles, or would have taken other affirmative steps in light of the information concealed from
21 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
22 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
23 members.

24 903. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
25 members have sustained damage because they own vehicles that are diminished in value as a result
26 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
27 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
28 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered

1 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
2 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
3 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
4 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
5 or would not have purchased or leased them at all.

6 904. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
7 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
8 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
9 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
10 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
11 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
12 vehicles.

13 905. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
14 amount to be proven at trial.

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

20 **U. Claims Brought on Behalf of the Maryland Subclass**

21 **COUNT I**

22 **VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT**
23 **(MD. CODE ANN., COM. LAW § 13-101 ET SEQ.)**

24 907. Plaintiff incorporates by reference all preceding allegations as though fully set forth
25 herein.

26 908. This claim is brought only on behalf of members of the Maryland Subclass against
27 FCA.

1 909. Defendant, Plaintiff, and the Maryland Subclass members are “persons” within the
2 meaning of Md. Code Ann., Com. Law § 13-101(h).

3 910. The Maryland Consumer Protection Act (“Maryland CPA”) provides that a person
4 may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md.
5 Code Ann., Com. Law Code § 13-303. In the course of Defendant’s business, Defendant willfully
6 failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles
7 turns off or is limited during normal driving conditions, that the emissions controls were defective,
8 that the vehicles have a “defeat device,” and that the Affected Vehicles emitted unlawfully high
9 levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair
10 and deceptive trade practices. Defendant’s acts and practices offend public policy; were immoral,
11 unethical, oppressive, or unscrupulous; caused substantial injury to consumers; had the capacity,
12 tendency or effect of deceiving or misleading consumers; failed to state a material fact that deceives
13 or tends to deceive; and constitute deception, fraud, false pretense, false premise, misrepresentation,
14 or knowing concealment, suppression, or omission of any material fact with the intent that a
15 consumer rely on the same in connection therewith.

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

1 actually is; and failing to reveal facts that are material to the transaction in light of representations of
2 fact made in a positive manner.

3 912. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
4 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
5 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
6 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
7 including NOx, as described above.

8 913. Plaintiff and Subclass members reasonably relied upon Defendant's false
9 misrepresentations. They had no way of knowing that Defendant's representations were false and
10 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
11 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
12 their own.

13 914. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

14 915. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
15 reasonable consumers.

16 916. Defendant intentionally and knowingly misrepresented material facts regarding the
17 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

18 917. Defendant knew or should have known that its conduct violated the Maryland CPA.

19 918. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
20 emissions systems manipulation because Defendant:

- 21 a. Possessed exclusive knowledge that it manipulated the emissions system in the
22 Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions;
- 24 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 25 c. Made incomplete representations that it manipulated the emissions system in
26 the Affected Vehicles to turn off or limit effectiveness in normal driving
27 conditions, while purposefully withholding material facts from Plaintiff and
28 the Subclass that contradicted these representations.

1 919. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 920. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
9 members.

10 921. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
11 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
12 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
13 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
14 direct and natural consequence of Defendant’s misrepresentations and omissions.

15 922. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
16 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

17 923. Pursuant to Md. Code Ann., Com. Law § 13-408, Plaintiff and the Maryland Subclass
18 seek actual damages, attorneys’ fees, and any other just and proper relief available under the
19 Maryland CPA.

20 **COUNT II**

21 **FRAUDULENT CONCEALMENT**
22 **(BASED ON MARYLAND LAW)**

23 924. Plaintiff incorporates by reference all preceding allegations as though fully set forth
24 herein.

25 925. This claim is brought on behalf of the Maryland Subclass against FCA.

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

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

6 927. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
7 advertising and other forms of communication, including standard and uniform material provided
8 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
9 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
10 properly when driven in normal usage.

11 928. Defendant knew these representations were false when made.

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

17 930. Defendant had a duty to disclose that the NOx reduction system in the Affected
18 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
19 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
20 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
21 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
22 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
23 emission vehicles, efficient, and free from defects.

24 931. As alleged in this Complaint, at all relevant times, Defendant has held out the
25 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
26 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
27 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
28 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a

1 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
2 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
3 making other disclosures about the emission system deceptive.

4 932. The truth about the defective emissions controls and Defendant’s manipulations of
5 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
6 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
7 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
8 members.

9 933. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
10 had no way of knowing that Defendant’s representations were false and/or misleading. As
11 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
12 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
13 true facts about the Affected Vehicles’ emissions.

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

21 935. Defendant’s false representations were material to consumers because they concerned
22 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
23 state laws and regulations regarding clean air and emissions, and also because the representations
24 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
25 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
26 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

27 936. Defendant had a duty to disclose the emissions defect, defective design of emissions
28 controls, and violations with respect to the Affected Vehicles because details of the true facts were

1 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
2 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
3 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
4 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
5 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
6 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
7 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
8 respect to compliance with federal and state clean air laws and emissions regulations, and
9 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
10 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
11 truth, but the entire truth. These omitted and concealed facts were material because they directly
12 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
13 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
14 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
15 or non-compliance, are material concerns to a consumer, including with respect to the emissions
16 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
17 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
18 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

24 938. Defendant still has not made full and adequate disclosures, and continues to defraud
25 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
26 of the Affected Vehicles.

27 939. Plaintiff and Subclass members were unaware of the omitted material facts referenced
28 herein, and they would not have acted as they did if they had known of the concealed and/or

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

7 940. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
8 members have sustained damage because they own vehicles that are diminished in value as a result
9 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
10 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
11 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
12 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
13 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
14 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
15 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
16 or would not have purchased or leased them at all.

17 941. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
18 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
19 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
20 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
21 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
22 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
23 vehicles.

24 942. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
25 amount to be proven at trial.

26 943. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
27 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
28 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct

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

3 **V. Claims Brought on Behalf of the Massachusetts Subclass**

4 **COUNT I**

5 **VIOLATIONS OF THE MASSACHUSETTS CONSUMER**
6 **PROTECTION ACT**
7 **(MASS. GEN. LAWS CH. 93A)**

8 944. Plaintiff incorporates by reference all preceding allegations as though fully set forth
9 herein.

10 945. This claim is brought on behalf of the Massachusetts Subclass against FCA.

11 946. Plaintiff intends to assert a claim under the Massachusetts Consumer Protection Act
12 (“MCPA”), which makes it unlawful to engage in any “[u]nfair methods of competition or deceptive
13 acts or practices in the conduct of any trade or commerce.” Mass. Gen. Laws ch. 93A, § 2(1).
14 Plaintiff will make a demand in satisfaction of Mass. Gen. Laws ch. 93A, § 9(3), and may amend this
15 Complaint to assert claims under the MCPA once the required 30 days have elapsed. This paragraph
16 is included for purposes of notice only and is not intended to actually assert a claim under the
17 MCPA.

18 **COUNT II**

19 **FRAUDULENT CONCEALMENT**
20 **(BASED ON MASSACHUSETTS LAW)**

21 947. Plaintiff incorporates by reference all preceding allegations as though fully set forth
22 herein.

23 948. This claim is brought on behalf of the Massachusetts Subclass against FCA.

24 949. Defendant intentionally concealed that the NOx reduction system in the Affected
25 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
26 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
27 emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s
28 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth

1 and denied Plaintiff and the other Subclass members information that is highly relevant to their
2 purchasing decision.

3 950. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
4 advertising and other forms of communication, including standard and uniform material provided
5 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
6 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
7 properly when driven in normal usage.

8 951. Defendant knew these representations were false when made.

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

14 953. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

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

1 955. The truth about the defective emissions controls and Defendant’s manipulations of
2 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
3 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
4 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
5 members.

6 956. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
7 had no way of knowing that Defendant’s representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles’ emissions.

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

18 958. Defendant’s false representations were material to consumers because they concerned
19 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
20 state laws and regulations regarding clean air and emissions, and also because the representations
21 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
22 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
23 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

24 959. Defendant had a duty to disclose the emissions defect, defective design of emissions
25 controls, and violations with respect to the Affected Vehicles because details of the true facts were
26 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
27 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
28 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general

1 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
2 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
3 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
4 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
5 respect to compliance with federal and state clean air laws and emissions regulations, and
6 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
8 truth, but the entire truth. These omitted and concealed facts were material because they directly
9 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
10 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
11 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
12 or non-compliance, are material concerns to a consumer, including with respect to the emissions
13 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
14 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
15 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

21 961. Defendant still has not made full and adequate disclosures, and continues to defraud
22 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
23 of the Affected Vehicles.

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

1 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
2 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
3 members.

4 963. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
5 members have sustained damage because they own vehicles that are diminished in value as a result
6 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
7 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
8 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
9 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
10 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
11 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
12 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
13 or would not have purchased or leased them at all.

14 964. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
15 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
16 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
17 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
18 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
19 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
20 vehicles.

21 965. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

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

1 **W. Claims Brought on Behalf of the Michigan Subclass**

2 **COUNT I**

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

5 967. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

6 968. This claim is brought on behalf of the Michigan Subclass against FCA.

7 969. Plaintiff and the Michigan Subclass members were “person[s]” within the meaning of
8 the Mich. Comp. Laws § 445.902(1)(d).

9 970. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair,
10 unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce,”
11 including: “(c) Representing that goods or services have ... characteristics ... that they do not have;”
12 “(e) Representing that goods or services are of a particular standard ... if they are of another;”
13 “(i) Making false or misleading statements of fact concerning the reasons for, existence of, or
14 amounts of price reductions;” “(s) Failing to reveal a material fact, the omission of which tends to
15 mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;”
16 “(bb) Making a representation of fact or statement of fact material to the transaction such that a
17 person reasonably believes the represented or suggested state of affairs to be other than it actually
18 is;” and “(cc) Failing to reveal facts that are material to the transaction in light of representations of
19 fact made in a positive manner.” Mich. Comp. Laws § 445.903(1).

20 971. In the course of Defendant’s business, Defendant willfully failed to disclose and
21 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
22 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
23 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
24 consumer would expect in light of Defendant’s advertising campaign. Accordingly, Defendant
25 engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive
26 acts or practices, including representing that the Affected Vehicles have characteristics, uses,
27 benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
28 particular standard and quality when they are not; failing to reveal a material fact, the omission of

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

6 972. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
7 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
8 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
9 controls were defective, and that the Affected Vehicles emitted unexpectedly high levels of
10 pollutants, including NOx, as described above.

11 973. Plaintiff and Subclass members reasonably relied upon Defendant's false
12 misrepresentations. They had no way of knowing that Defendant's representations were false and
13 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
14 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
15 their own.

16 974. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

17 975. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
18 reasonable consumers.

19 976. Defendant intentionally and knowingly misrepresented material facts regarding the
20 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

21 977. Defendant knew or should have known that its conduct violated the Michigan CPA.

22 978. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
23 emissions systems manipulation because Defendant:

- 24 a. Possessed exclusive knowledge that it manipulated the emissions system in the
25 Affected Vehicles to turn off or limit effectiveness in normal driving
26 conditions;
- 27 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 28

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

5 979. Defendant had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
7 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
8 powered vehicles, and had emissions that far exceeded those expected by a reasonable consumer.

9 980. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
10 members.

11 981. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
12 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
13 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
14 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
15 direct and natural consequence of Defendant’s misrepresentations and omissions.

16 982. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
17 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

18 983. Plaintiff seeks monetary relief measured as the greater of (a) actual damages in an
19 amount to be determined at trial and (b) statutory damages in the amount of \$250 for Plaintiff and
20 each Michigan Subclass member; reasonable attorneys’ fees; and any other just and proper relief
21 available under Mich. Comp. Laws § 445.911. Plaintiff also seeks punitive damages against
22 Defendant because it carried out despicable conduct with willful and conscious disregard of the
23 rights of others. Defendant’s unlawful conduct constitutes malice, oppression, and fraud warranting
24 punitive damages.

25 **COUNT II**

26 **FRAUDULENT CONCEALMENT**
27 **(BASED ON MICHIGAN LAW)**

28 984. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1 985. This claim is brought on behalf of the Michigan Subclass against FCA.

2 986. Defendant intentionally concealed that the NOx reduction system in the Affected
3 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
4 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
5 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
6 advertising campaign, and emitted unlawfully high levels of pollutants such as NOx, or Defendant
7 acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members
8 information that is highly relevant to their purchasing decision.

9 987. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
10 advertising and other forms of communication, including standard and uniform material provided
11 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
12 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
13 properly when driven in normal usage.

14 988. Defendant knew these representations were false when made.

15 989. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
16 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
17 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
18 advertising campaign, and were unreliable because the NOx reduction system in the Affected
19 Vehicles turns off or is limited during normal driving conditions.

20 990. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, and had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 991. As alleged in this Complaint, at all relevant times, Defendant has held out the
28 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain

1 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
2 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
3 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
4 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, and
5 emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions
6 requirements, making other disclosures about the emission system deceptive.

7 992. The truth about the defective emissions controls and Defendant’s manipulations of
8 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
9 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
10 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
11 members.

12 993. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
13 had no way of knowing that Defendant’s representations were false and/or misleading. As
14 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
15 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
16 true facts about the Affected Vehicles’ emissions.

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

24 995. Defendant’s false representations were material to consumers because they concerned
25 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
26 state laws and regulations regarding clean air and emissions, and also because the representations
27 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
28

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

3 996. Defendant had a duty to disclose the emissions defect, defective design of emissions
4 controls, and violations with respect to the Affected Vehicles because details of the true facts were
5 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
6 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
7 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
8 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
9 references to them as *reduced-emissions* diesel cars and as compliant with all laws in each state,
10 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
11 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
12 respect to compliance with federal and state clean air laws and emissions regulations, and
13 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
14 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
15 truth, but the entire truth. These omitted and concealed facts were material because they directly
16 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
17 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
18 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
19 or non-compliance, are material concerns to a consumer, including with respect to the emissions
20 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
21 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
22 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

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

1 998. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 999. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 1000. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth,
19 Plaintiff and Subclass members who purchased or leased new or certified pre-owned vehicles would
20 have paid less for their vehicles or would not have purchased or leased them at all.

21 1001. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
22 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles,
23 and the unlawfully high emissions of the Affected Vehicles, all of which has greatly tarnished
24 Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made
25 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what
26 otherwise would have been fair market value for the vehicles.

27 1002. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
28 amount to be proven at trial.

1 1003. Defendant’s acts were done wantonly, maliciously, oppressively, deliberately, with
2 intent to defraud, and in reckless disregard of Plaintiff’s and Subclass members’ rights and the
3 representations that Defendant made to them, in order to enrich Defendant. Defendant’s conduct
4 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
5 future, which amount is to be determined according to proof.

6 **X. Claims Brought on Behalf of the Minnesota Subclass**

7 **COUNT I**

8 **VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT**
9 **(MINN. STAT. § 325F.68 ET SEQ.)**

10 1004. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

11 1005. This claim is brought on behalf of the Minnesota Subclass against FCA.

12 1006. The Affected Vehicles constitute “merchandise” within the meaning of Minn. Stat.
13 § 325F.68(2).

14 1007. The Minnesota Prevention of Consumer Fraud Act (“Minnesota CFA”) prohibits
15 “[t]he act, use, or employment by any person of any fraud, false pretense, false promise,
16 misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon
17 in connection with the sale of any merchandise, whether or not any person has in fact been misled,
18 deceived, or damaged thereby.” Minn. Stat. § 325F.69(1). The Minnesota CFA also prohibits the
19 dissemination, directly or indirectly, of an advertisement “of any sort regarding merchandise,” where
20 that advertisement contains “any material assertion, representation, or statement of fact which is
21 untrue, deceptive, or misleading.” Minn. Stat. § 325F.67. In the course of Defendant’s business,
22 Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles
24 emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more
25 pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign,
26 and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as
27 described above. Accordingly, Defendant used or employed a fraud, false pretense, false promise,
28 misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon

1 in connection with the sale of any merchandise, whether or not any person has in fact been misled,
2 deceived, or damaged thereby and disseminated advertisements containing material assertions,
3 representations, or statements of fact which were untrue, deceptive, or misleading, all in violation of
4 the Minnesota CFA.

5 1008. In the course of Defendant's business, Defendant willfully failed to disclose and
6 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
7 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
8 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
9 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
10 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
11 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
12 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
13 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
14 particular standard and quality when they are not; failing to reveal a material fact, the omission of
15 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
16 the consumer; making a representation of fact or statement of fact material to the transaction such
17 that a person reasonably believes the represented or suggested state of affairs to be other than it
18 actually is; and failing to reveal facts that are material to the transaction in light of representations of
19 fact made in a positive manner.

20 1009. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
21 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
22 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
23 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
24 including NOx, as described above.

25 1010. Plaintiff and Subclass members reasonably relied upon Defendant's false
26 misrepresentations. They had no way of knowing that Defendant's representations were false and
27 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
28

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 1011. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 1012. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 1013. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 1014. Defendant knew or should have known that its conduct violated the Minnesota CFA.

9 1015. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 1016. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 1017. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
2 properly when driven in normal usage.

3 1026. Defendant knew these representations were false when made.

4 1027. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
5 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
6 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
7 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
8 Affected Vehicles turns off or is limited during normal driving conditions.

9 1028. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 1029. As alleged in this Complaint, at all relevant times, Defendant has held out the
17 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
18 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
19 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
20 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
21 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
22 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
23 making other disclosures about the emission system deceptive.

24 1030. The truth about the defective emissions controls and Defendant's manipulations of
25 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
26 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
27 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
28 members.

1 1031. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
2 had no way of knowing that Defendant’s representations were false and/or misleading. As
3 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
4 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
5 true facts about the Affected Vehicles’ emissions.

6 1032. Defendant also concealed and suppressed material facts concerning what is evidently
7 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
8 compliance with federal and state clean air laws and emissions regulations that are meant to protect
9 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
10 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
11 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
12 environment. And yet, that is precisely what the Affected Vehicles are doing.

13 1033. Defendant’s false representations were material to consumers because they concerned
14 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
15 state laws and regulations regarding clean air and emissions, and also because the representations
16 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
17 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
18 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

19 1034. Defendant had a duty to disclose the emissions defect, defective design of emissions
20 controls, and violations with respect to the Affected Vehicles because details of the true facts were
21 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
22 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
23 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
24 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
25 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
26 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
27 forth above regarding the actual emissions of the vehicles, Defendant’s actual philosophy with
28 respect to compliance with federal and state clean air laws and emissions regulations, and

1 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
2 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
3 truth, but the entire truth. These omitted and concealed facts were material because they directly
4 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
5 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
6 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
7 or non-compliance, are material concerns to a consumer, including with respect to the emissions
8 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
9 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
10 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

11 1035. Defendant actively concealed and/or suppressed these material facts, in whole or in
12 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
13 vehicles and did not or could not comply with federal and state laws governing clean air and
14 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
15 at the expense of Plaintiff and Subclass members.

16 1036. Defendant still has not made full and adequate disclosures, and continues to defraud
17 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
18 of the Affected Vehicles.

19 1037. Plaintiff and Subclass members were unaware of the omitted material facts referenced
20 herein, and they would not have acted as they did if they had known of the concealed and/or
21 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
22 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
23 vehicles, or would have taken other affirmative steps in light of the information concealed from
24 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
25 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
26 members.

27 1038. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
28 members have sustained damage because they own vehicles that are diminished in value as a result

1 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
2 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
3 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
4 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
5 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
6 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
7 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
8 or would not have purchased or leased them at all.

9 1039. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
10 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
11 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
12 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
13 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
14 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
15 vehicles.

16 1040. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
17 amount to be proven at trial.

18 1041. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
19 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
20 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
21 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
22 future, which amount is to be determined according to proof.

23 **Y. Claims Brought on Behalf of the Missouri Subclass**

24 **COUNT I**

25 **VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT**
26 **(MO. REV. STAT. § 407.010 ET SEQ.)**

27 1042. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

28 1043. Plaintiff brings this Count on behalf of the Missouri Subclass against FCA.

1 1044. Defendant, Plaintiff, and the Missouri Subclass members are “persons” within the
2 meaning of Mo. Rev. Stat. § 407.010(5).

3 1045. Defendant engaged in “trade” or “commerce” in the State of Missouri within the
4 meaning of Mo. Rev. Stat. § 407.010(7).

5 1046. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the
6 “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation,
7 unfair practice, or the concealment, suppression, or omission of any material fact in connection with
8 the sale or advertisement of any merchandise.” Mo. Rev. Stat. § 407.020. In the course of
9 Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx
10 reduction system in the Affected Vehicles turns off or is limited during normal driving conditions,
11 that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the
12 Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of
13 Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of
14 pollutants, including NOx, as described above. Accordingly, Defendant used or employed
15 deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment,
16 suppression, or omission of any material fact in connection with the sale or advertisement of any
17 merchandise in trade or commerce, in violation of the Missouri MPA. Defendant’s conduct offends
18 public policy; is unethical, oppressive, or unscrupulous; and presents a risk of, or causes, substantial
19 injury to consumers.

20 1047. In the course of Defendant’s business, Defendant willfully failed to disclose and
21 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
22 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
23 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
24 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
25 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
26 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
27 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
28 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a

1 particular standard and quality when they are not; failing to reveal a material fact, the omission of
2 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
3 the consumer; making a representation of fact or statement of fact material to the transaction such
4 that a person reasonably believes the represented or suggested state of affairs to be other than it
5 actually is; and failing to reveal facts that are material to the transaction in light of representations of
6 fact made in a positive manner.

7 1048. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
8 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
9 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
10 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
11 including NOx, as described above.

12 1049. Plaintiff and Subclass members reasonably relied upon Defendant's false
13 misrepresentations. They had no way of knowing that Defendant's representations were false and
14 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
15 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
16 their own.

17 1050. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

18 1051. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
19 reasonable consumers.

20 1052. Defendant intentionally and knowingly misrepresented material facts regarding the
21 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

22 1053. Defendant knew or should have known that its conduct violated the Missouri MPA.

23 1054. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
24 emissions systems manipulation because Defendant:

- 25 a. Possessed exclusive knowledge that it manipulated the emissions system in the
26 Affected Vehicles to turn off or limit effectiveness in normal driving
27 conditions;
- 28 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or

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

5 1055. Defendant had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
7 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
8 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
9 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
10 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
11 emission vehicles, efficient, and free from defects.

12 1056. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
13 members.

14 1057. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
15 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
16 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
17 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
18 direct and natural consequence of Defendant’s misrepresentations and omissions.

19 1058. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
20 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

21 1059. Defendant is liable to Plaintiff and the Missouri Subclass for damages in amounts to
22 be proven at trial, including attorneys’ fees, costs, and punitive damages, and any other just and
23 proper relief under Mo. Rev. Stat. § 407.025.

24 **COUNT II**

25 **FRAUDULENT CONCEALMENT**
26 **(BASED ON MISSOURI LAW)**

27 1060. Plaintiff incorporates by reference all preceding allegations as though fully set forth
28 herein.

1 1061. This claim is brought on behalf of the Missouri Subclass against FCA.

2 1062. Defendant intentionally concealed that the NOx reduction system in the Affected
3 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
4 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
5 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
6 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
7 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
8 and denied Plaintiff and the other Subclass members information that is highly relevant to their
9 purchasing decision.

10 1063. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
11 advertising and other forms of communication, including standard and uniform material provided
12 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
13 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
14 properly when driven in normal usage.

15 1064. Defendant knew these representations were false when made.

16 1065. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
17 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
18 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
19 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
20 Affected Vehicles turns off or is limited during normal driving conditions.

21 1066. Defendant had a duty to disclose that the NOx reduction system in the Affected
22 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
23 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
24 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
25 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
26 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
27 emission vehicles, efficient, and free from defects.

1 1067. As alleged in this Complaint, at all relevant times, Defendant has held out the
2 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
3 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
4 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
5 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
6 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
7 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
8 making other disclosures about the emission system deceptive.

9 1068. The truth about the defective emissions controls and Defendant’s manipulations of
10 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
11 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
12 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
13 members.

14 1069. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
15 had no way of knowing that Defendant’s representations were false and/or misleading. As
16 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
17 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
18 true facts about the Affected Vehicles’ emissions.

19 1070. Defendant also concealed and suppressed material facts concerning what is evidently
20 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
21 compliance with federal and state clean air laws and emissions regulations that are meant to protect
22 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
23 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
24 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
25 environment. And yet, that is precisely what the Affected Vehicles are doing.

26 1071. Defendant’s false representations were material to consumers because they concerned
27 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
28 state laws and regulations regarding clean air and emissions, and also because the representations

1 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
2 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
3 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

4 1072. Defendant had a duty to disclose the emissions defect, defective design of emissions
5 controls, and violations with respect to the Affected Vehicles because details of the true facts were
6 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
7 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
8 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
9 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
10 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
11 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
12 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
13 respect to compliance with federal and state clean air laws and emissions regulations, and
14 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
15 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
16 truth, but the entire truth. These omitted and concealed facts were material because they directly
17 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
18 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
19 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
20 or non-compliance, are material concerns to a consumer, including with respect to the emissions
21 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
22 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
23 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

24 1073. Defendant actively concealed and/or suppressed these material facts, in whole or in
25 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
26 vehicles and did not or could not comply with federal and state laws governing clean air and
27 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
28 at the expense of Plaintiff and Subclass members.

1 1074. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 1075. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 1076. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
19 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
20 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
21 or would not have purchased or leased them at all.

22 1077. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
23 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
24 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
25 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
26 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
27 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
28 vehicles.

1 1078. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
2 amount to be proven at trial.

3 1079. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
5 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
6 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
7 future, which amount is to be determined according to proof.

8 **Z. Claims Brought on Behalf of the Montana Subclass**

9 **COUNT I**

10 **VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER**
11 **PROTECTION ACT OF 1973**
(MONT. CODE ANN. § 30-14-101 ET SEQ.)

12 1080. Plaintiff incorporates by reference all preceding allegations as though fully set forth
13 herein.

14 1081. This claim is brought only on behalf of the Montana Subclass against FCA.

15 1082. Defendant, Plaintiff, and the Montana Subclass members are "persons" within the
16 meaning of Mont. Code Ann. § 30-14-102(6).

17 1083. Montana Subclass members are "consumer[s]" under Mont. Code Ann. § 30-14-
18 102(1).

19 1084. The sale or lease of the Affected Vehicles to Montana Subclass members occurred
20 within "trade and commerce" within the meaning of Mont. Code Ann. § 30-14-102(8), and
21 Defendant committed deceptive and unfair acts in the conduct of "trade and commerce" as defined in
22 that statutory section.

23 1085. The Montana Unfair Trade Practices and Consumer Protection Act ("Montana CPA")
24 makes unlawful any "unfair methods of competition and unfair or deceptive acts or practices in the
25 conduct of any trade or commerce." Mont. Code Ann. § 30-14-103. In the course of Defendant's
26 business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system
27 in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected
28 Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit

1 far more pollution than a reasonable consumer would expect in light of Defendant's advertising
2 campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including
3 NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition and
4 unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of the
5 Montana CPA.

6 1086. In the course of Defendant's business, Defendant willfully failed to disclose and
7 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
8 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
9 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
10 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
11 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
12 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
13 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
14 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
15 particular standard and quality when they are not; failing to reveal a material fact, the omission of
16 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
17 the consumer; making a representation of fact or statement of fact material to the transaction such
18 that a person reasonably believes the represented or suggested state of affairs to be other than it
19 actually is; and failing to reveal facts that are material to the transaction in light of representations of
20 fact made in a positive manner.

21 1087. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above.

26 1088. Plaintiff and Subclass members reasonably relied upon Defendant's false
27 misrepresentations. They had no way of knowing that Defendant's representations were false and
28 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 1089. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 1090. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 1091. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 1092. Defendant knew or should have known that its conduct violated the Montana CPA.

9 1093. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 1094. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 1095. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1 1096. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
2 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
3 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
4 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
5 direct and natural consequence of Defendant's misrepresentations and omissions.

6 1097. Defendant's violations present a continuing risk to Plaintiff as well as to the general
7 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

8 1098. Because Defendant's unlawful methods, acts, and practices have caused Plaintiff and
9 Montana Subclass members to suffer an ascertainable loss of money and property, Plaintiff and the
10 Subclass seek from Defendant actual damages or \$500, whichever is greater, discretionary treble
11 damages, reasonable attorneys' fees, and any other relief the Court considers necessary or proper,
12 under Mont. Code Ann. § 30-14-133.

13 **COUNT II**

14 **FRAUDULENT CONCEALMENT**
15 **(BASED ON MONTANA LAW)**

16 1099. Plaintiff incorporates by reference all preceding allegations as though fully set forth
17 herein.

18 1100. This claim is brought on behalf of the Montana Subclass against FCA.

19 1101. Defendant intentionally concealed that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
21 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
22 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
23 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
24 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
25 and denied Plaintiff and the other Subclass members information that is highly relevant to their
26 purchasing decision.

27 1102. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
28 advertising and other forms of communication, including standard and uniform material provided

1 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
2 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
3 properly when driven in normal usage.

4 1103. Defendant knew these representations were false when made.

5 1104. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
6 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
7 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
8 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
9 Affected Vehicles turns off or is limited during normal driving conditions.

10 1105. Defendant had a duty to disclose that the NOx reduction system in the Affected
11 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
12 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
13 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
14 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
15 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
16 emission vehicles, efficient, and free from defects.

17 1106. As alleged in this Complaint, at all relevant times, Defendant has held out the
18 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
19 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
20 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
21 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
22 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
23 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
24 making other disclosures about the emission system deceptive.

25 1107. The truth about the defective emissions controls and Defendant's manipulations of
26 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
27 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
28

1 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
2 members.

3 1108. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
4 had no way of knowing that Defendant's representations were false and/or misleading. As
5 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
6 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
7 true facts about the Affected Vehicles' emissions.

8 1109. Defendant also concealed and suppressed material facts concerning what is evidently
9 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
10 compliance with federal and state clean air laws and emissions regulations that are meant to protect
11 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
12 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
13 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
14 environment. And yet, that is precisely what the Affected Vehicles are doing.

15 1110. Defendant's false representations were material to consumers because they concerned
16 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
17 state laws and regulations regarding clean air and emissions, and also because the representations
18 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
19 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
20 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

21 1111. Defendant had a duty to disclose the emissions defect, defective design of emissions
22 controls, and violations with respect to the Affected Vehicles because details of the true facts were
23 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
24 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
25 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
26 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
27 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
28 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set

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

13 1112. Defendant actively concealed and/or suppressed these material facts, in whole or in
14 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
15 vehicles and did not or could not comply with federal and state laws governing clean air and
16 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
17 at the expense of Plaintiff and Subclass members.

18 1113. Defendant still has not made full and adequate disclosures, and continues to defraud
19 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
20 of the Affected Vehicles.

21 1114. Plaintiff and Subclass members were unaware of the omitted material facts referenced
22 herein, and they would not have acted as they did if they had known of the concealed and/or
23 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
24 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
25 vehicles, or would have taken other affirmative steps in light of the information concealed from
26 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
27 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
28 members.

1 1115. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
2 members have sustained damage because they own vehicles that are diminished in value as a result
3 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
4 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
5 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
6 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
7 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
8 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
9 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
10 or would not have purchased or leased them at all.

11 1116. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
12 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
13 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
14 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
15 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
16 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
17 vehicles.

18 1117. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
19 amount to be proven at trial.

20 1118. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
21 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
22 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
23 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
24 future, which amount is to be determined according to proof.

1 **AA. Claims Brought on Behalf of the Nebraska Subclass**

2 **COUNT I**

3 **VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT**
4 **(NEB. REV. STAT. § 59-1601 ET SEQ.)**

5 1119. Plaintiff incorporates by reference all preceding allegations as though fully set forth
6 herein.

7 1120. This claim is brought on behalf of the Nebraska Subclass against FCA.

8 1121. Defendant, Plaintiff and Nebraska Subclass members are “person[s]” under the
9 Nebraska Consumer Protection Act (“Nebraska CPA”), Neb. Rev. Stat. § 59-1601(1).

10 1122. Defendant’s actions as set forth herein occurred in the conduct of trade or commerce
11 as defined under Neb. Rev. Stat. § 59-1601(2).

12 1123. The Nebraska CPA prohibits “unfair or deceptive acts or practices in the conduct of
13 any trade or commerce.” Neb. Rev. Stat. § 59-1602. Defendant’s conduct as set forth herein
14 constitutes unfair or deceptive acts or practices.

15 1124. In the course of Defendant’s business, Defendant willfully failed to disclose and
16 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
17 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
18 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
19 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
20 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
21 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
22 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
23 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
24 particular standard and quality when they are not; failing to reveal a material fact, the omission of
25 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
26 the consumer; making a representation of fact or statement of fact material to the transaction such
27 that a person reasonably believes the represented or suggested state of affairs to be other than it
28

1 actually is; and failing to reveal facts that are material to the transaction in light of representations of
2 fact made in a positive manner.

3 1125. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
4 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
5 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
6 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
7 including NOx, as described above.

8 1126. Plaintiff and Subclass members reasonably relied upon Defendant's false
9 misrepresentations. They had no way of knowing that Defendant's representations were false and
10 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
11 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
12 their own.

13 1127. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

14 1128. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
15 reasonable consumers.

16 1129. Defendant intentionally and knowingly misrepresented material facts regarding the
17 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

18 1130. Defendant knew or should have known that its conduct violated the Nebraska CPA.

19 1131. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
20 emissions systems manipulation because Defendant:

- 21 a. Possessed exclusive knowledge that it manipulated the emissions system in the
22 Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions;
- 24 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 25 c. Made incomplete representations that it manipulated the emissions system in
26 the Affected Vehicles to turn off or limit effectiveness in normal driving
27 conditions, while purposefully withholding material facts from Plaintiff and
28 the Subclass that contradicted these representations.

1 1132. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 1133. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
9 members.

10 1134. Because Defendant’s conduct caused injury to Nebraska Subclass members’ property
11 through violations of the Nebraska CPA, Plaintiff and the Nebraska Subclass seek recovery of actual
12 damages, as well as enhanced damages up to \$1,000, an order enjoining Defendant’s unfair or
13 deceptive acts and practices, court costs, reasonable attorneys’ fees, and any other just and proper
14 relief available under Neb. Rev. Stat. § 59-1609.

15 **COUNT II**

16 **FRAUDULENT CONCEALMENT**
17 **(BASED ON NEBRASKA LAW)**

18 1135. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

19 1136. Plaintiff brings this Count on behalf of the Nebraska Subclass against FCA.

20 1137. Defendant intentionally concealed that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
22 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
23 emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s
24 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
25 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
26 and denied Plaintiff and the other Subclass members information that is highly relevant to their
27 purchasing decision.
28

1 1138. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 1139. Defendant knew these representations were false when made.

7 1140. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
8 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
9 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
10 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions.

12 1141. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 1142. As alleged in this Complaint, at all relevant times, Defendant has held out the
20 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
21 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
22 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
23 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
24 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
25 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
26 making other disclosures about the emission system deceptive.

27 1143. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1144. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1145. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1146. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1147. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1148. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1149. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1150. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1151. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1152. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1153. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1154. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

1 **BB. Claims Brought on Behalf of the Nevada Subclass**

2 **COUNT I**

3 **VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT**
4 **(NEV. REV. STAT. § 598.0903 ET SEQ.)**

5 1155. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

6 1156. Plaintiff brings this Count on behalf of the Nevada Subclass against FCA.

7 1157. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), Nev. Rev. Stat.
8 § 598.0903 *et seq.*, prohibits deceptive trade practices. Nev. Rev. Stat. § 598.0915 provides that a
9 person engages in a “deceptive trade practice” if, in the course of business or occupation, the person:
10 “5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits,
11 alterations or quantities of goods or services for sale or lease or a false representation as to the
12 sponsorship, approval, status, affiliation or connection of a person therewith”; “7. Represents that
13 goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are
14 of a particular style or model, if he or she knows or should know that they are of another standard,
15 quality, grade, style or model”; “9. Advertises goods or services with intent not to sell or lease them
16 as advertised”; or “15. Knowingly makes any other false representation in a transaction.”
17 Accordingly, Defendant has violated the Nevada DTPA by knowingly representing that the Affected
18 Vehicles have uses and benefits which they do not have; representing that the Affected Vehicles are
19 of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the
20 intent not to sell or lease them as advertised; representing that the subject of a transaction involving
21 Affected Vehicles has been supplied in accordance with a previous representation when it has not;
22 and knowingly making other false representations in a transaction.

23 1158. In the course of Defendant’s business, Defendant willfully failed to disclose and
24 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
25 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
26 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
27 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
28 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,

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

10 1159. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
11 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
12 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
13 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
14 including NOx, as described above.

15 1160. Plaintiff and Subclass members reasonably relied upon Defendant's false
16 misrepresentations. They had no way of knowing that Defendant's representations were false and
17 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
18 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
19 their own.

20 1161. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

21 1162. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
22 reasonable consumers.

23 1163. Defendant intentionally and knowingly misrepresented material facts regarding the
24 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

25 1164. Defendant knew or should have known that its conduct violated the Nevada DTPA.

26 1165. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
27 emissions systems manipulation because Defendant:
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- 1 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 2 Affected Vehicles to turn off or limit effectiveness in normal driving
- 3 conditions;
- 4 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 5 c. Made incomplete representations that it manipulated the emissions system in
- 6 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 7 conditions, while purposefully withholding material facts from Plaintiff and
- 8 the Subclass that contradicted these representations.

9 1166. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 1167. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
17 members.

18 1168. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
19 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
20 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
21 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
22 direct and natural consequence of Defendant’s misrepresentations and omissions.

23 1169. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
24 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

25 1170. Accordingly, Plaintiff and the Nevada Subclass seek their actual damages, punitive
26 damages, court costs, attorney’s fees, and all other appropriate and available remedies under the
27 Nevada DTPA. Nev. Rev. Stat. § 41.600.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON NEVADA LAW)**

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1171. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1172. This claim is brought on behalf of the Nevada Subclass against FCA.

1173. Defendant 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 Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1174. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was 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.

1175. Defendant knew these representations were false when made.

1176. The Affected Vehicles purchased or leased by Plaintiff 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 Defendant's 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.

1177. Defendant 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 the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1178. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 1179. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 1180. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 1181. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
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1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 1182. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1183. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1184. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1185. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1186. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1187. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1188. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
5 vehicles.

6 1189. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
7 amount to be proven at trial.

8 1190. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
12 future, which amount is to be determined according to proof.

13 **CC. Claims Brought on Behalf of the New Hampshire Subclass under New Hampshire Law**

14 **COUNT I**

15 **VIOLATION OF N.H. CONSUMER PROTECTION ACT**
16 **(N.H. REV. STAT. § 358-A:1 ET SEQ.)**

17 1191. Plaintiff incorporates by reference all preceding allegations as though fully set forth
18 herein.

19 1192. Plaintiff brings this claim on behalf of the New Hampshire Subclass against FCA.

20 1193. Plaintiff, New Hampshire Subclass members, and Defendant are "persons" under the
21 New Hampshire Consumer Protection Act ("New Hampshire CPA"), N.H. Rev. Stat. § 358-A:1.

22 1194. Defendant's actions as set forth herein occurred in the conduct of trade or commerce
23 as defined under N.H. Rev. Stat. § 358-A:1.

24 1195. The New Hampshire CPA prohibits a person, in the conduct of any trade or
25 commerce, from using "any unfair or deceptive act or practice," including "but ... not limited to, the
26 following: ... (V) Representing that goods or services have ... characteristics, ... uses, benefits, or
27 quantities that they do not have;" "(VII) Representing that goods or services are of a particular
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1 standard, quality, or grade, ... if they are of another;" and "(IX) Advertising goods or services with
2 intent not to sell them as advertised." N.H. Rev. Stat. § 358-A:2.

3 1196. In the course of Defendant's business, Defendant willfully failed to disclose and
4 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
5 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
6 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
7 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
8 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
9 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
10 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
11 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
12 particular standard and quality when they are not; failing to reveal a material fact, the omission of
13 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
14 the consumer; making a representation of fact or statement of fact material to the transaction such
15 that a person reasonably believes the represented or suggested state of affairs to be other than it
16 actually is; and failing to reveal facts that are material to the transaction in light of representations of
17 fact made in a positive manner.

18 1197. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
19 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
20 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
21 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
22 including NOx, as described above.

23 1198. Plaintiff and Subclass members reasonably relied upon Defendant's false
24 misrepresentations. They had no way of knowing that Defendant's representations were false and
25 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
26 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
27 their own.

28 1199. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

1 1200. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
2 reasonable consumers.

3 1201. Defendant intentionally and knowingly misrepresented material facts regarding the
4 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

5 1202. Defendant knew or should have known that its conduct violated the New Hampshire
6 CPA.

7 1203. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
8 emissions systems manipulation because Defendant:

- 9 a. Possessed exclusive knowledge that it manipulated the emissions system in the
10 Affected Vehicles to turn off or limit effectiveness in normal driving
11 conditions;
- 12 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 13 c. Made incomplete representations that it manipulated the emissions system in
14 the Affected Vehicles to turn off or limit effectiveness in normal driving
15 conditions, while purposefully withholding material facts from Plaintiff and
16 the Subclass that contradicted these representations.

17 1204. Defendant had a duty to disclose that the NOx reduction system in the Affected
18 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
19 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
20 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
21 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
22 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
23 emission vehicles, efficient, and free from defects.

24 1205. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
25 members.

26 1206. Because Defendant's willful conduct caused injury to New Hampshire Subclass
27 members' property through violations of the New Hampshire CPA, Plaintiff and the New Hampshire
28 Subclass seek recovery of actual damages or \$1,000, whichever is greater, treble damages, costs and

1 reasonable attorneys' fees, an order enjoining Defendant's unfair and/or deceptive acts and practices,
2 and any other just and proper relief under N.H. Rev. Stat. § 358-A:10.

3 **COUNT II**

4 **FRAUDULENT CONCEALMENT**
5 **(BASED ON NEW HAMPSHIRE LAW)**

6 1207. Plaintiff incorporates by reference all preceding allegations as though fully set forth
7 herein.

8 1208. Plaintiff brings this claim on behalf of the New Hampshire Subclass against FCA.

9 1209. Defendant intentionally concealed that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
11 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
12 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
13 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
14 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
15 and denied Plaintiff and the other Subclass members information that is highly relevant to their
16 purchasing decision.

17 1210. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
18 advertising and other forms of communication, including standard and uniform material provided
19 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
20 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
21 properly when driven in normal usage.

22 1211. Defendant knew these representations were false when made.

23 1212. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
24 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
25 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
26 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
27 Affected Vehicles turns off or is limited during normal driving conditions.

1 1213. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 1214. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 1215. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 1216. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 1217. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 1218. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 1219. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
17 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

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

3 1220. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
5 vehicles and did not or could not comply with federal and state laws governing clean air and
6 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
7 at the expense of Plaintiff and Subclass members.

8 1221. Defendant still has not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 1222. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 1223. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
24 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

1 1224. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
2 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
3 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
4 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
5 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
6 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
7 vehicles.

8 1225. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
9 amount to be proven at trial.

10 1226. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
11 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
12 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
13 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
14 future, which amount is to be determined according to proof.

15 **DD. Claims Brought on Behalf of the New Jersey Subclass Under New Jersey Law**

16 **COUNT I**

17 **VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT**
18 **(N.J. STAT. ANN. § 56:8-1 ET SEQ.)**

19 1227. Plaintiff incorporates by reference all preceding allegations as though fully set forth
20 herein.

21 1228. Plaintiff brings this Count on behalf of the New Jersey Subclass against FCA.

22 1229. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1 *et seq.* ("N.J. CFA"),
23 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

24 1230. In the course of Defendant's business, Defendant willfully failed to disclose and
25 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
26 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
27 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
28 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles

1 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
2 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
3 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
4 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
5 particular standard and quality when they are not; failing to reveal a material fact, the omission of
6 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
7 the consumer; making a representation of fact or statement of fact material to the transaction such
8 that a person reasonably believes the represented or suggested state of affairs to be other than it
9 actually is; and failing to reveal facts that are material to the transaction in light of representations of
10 fact made in a positive manner.

11 1231. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
12 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
14 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
15 including NOx, as described above.

16 1232. Plaintiff and Subclass members reasonably relied upon Defendant's false
17 misrepresentations. They had no way of knowing that Defendant's representations were false and
18 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
19 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
20 their own.

21 1233. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

22 1234. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
23 reasonable consumers.

24 1235. Defendant intentionally and knowingly misrepresented material facts regarding the
25 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

26 1236. Defendant knew or should have known that its conduct violated the N.J. CFA.

27 1237. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
28 emissions systems manipulation because Defendant:

- 1 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 2 Affected Vehicles to turn off or limit effectiveness in normal driving
- 3 conditions;
- 4 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 5 c. Made incomplete representations that it manipulated the emissions system in
- 6 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 7 conditions, while purposefully withholding material facts from Plaintiff and
- 8 the Subclass that contradicted these representations.

9 1238. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 1239. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
17 members.

18 1240. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
19 and Subclass members.

20 1241. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
21 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
22 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
23 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
24 direct and natural consequence of Defendant’s misrepresentations and omissions.

25 1242. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
26 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

27 1243. Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiff will serve the New Jersey Attorney
28 General with a copy of this Complaint within 10 days of filing.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON NEW JERSEY LAW)**

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1244. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1245. Plaintiff brings this Count on behalf of the New Jersey Subclass against FCA.

1246. Defendant 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 Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1247. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was 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.

1248. Defendant knew these representations were false when made.

1249. The Affected Vehicles purchased or leased by Plaintiff 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 Defendant's 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.

1250. Defendant 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 the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1251. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 1252. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 1253. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 1254. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
28

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

3 1255. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1256. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1257. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1258. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1259. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1260. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1261. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
5 vehicles.

6 1262. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
7 amount to be proven at trial.

8 1263. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
12 future, which amount is to be determined according to proof.

13 **EE. Claims Brought on Behalf of the New Mexico Subclass**

14 **COUNT I**

15 **VIOLATIONS OF THE NEW MEXICO UNFAIR**
16 **TRADE PRACTICES ACT**
(N.M. STAT. ANN. § 57-12-1 ET SEQ.)

17 1264. Plaintiff incorporates by reference all preceding allegations as though fully set forth
18 herein.

19 1265. This claim is brought on behalf of the New Mexico Subclass against FCA.

20 1266. Defendant, Plaintiff, and New Mexico Subclass members are or were "person[s]"
21 under the New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. Stat. Ann. § 57-12-
22 2. 010549-11 816608 V1

23 1267. Defendant's actions as set forth herein occurred in the conduct of trade or commerce
24 as defined under N.M. Stat. Ann. § 57-12-2.

25 1268. The New Mexico UTPA makes unlawful "a false or misleading oral or written
26 statement, visual description or other representation of any kind knowingly made in connection with
27 the sale, lease, rental or loan of goods or services ... by a person in the regular course of the person's
28 trade or commerce, that may, tends to or does deceive or mislead any person," including but not

1 limited to “failing to state a material fact if doing so deceives or tends to deceive.” N.M. Stat. Ann.
2 § 57-12- 2(D). Defendant’s acts and omissions described herein constitute unfair or deceptive acts or
3 practices under N.M. Stat. Ann. § 57-12-2(D). In addition, Defendant’s actions constitute
4 unconscionable actions under N.M. Stat. Ann. § 57-12-2(E), since they took advantage of the lack of
5 knowledge, ability, experience, and capacity of the New Mexico Subclass members to a grossly
6 unfair degree.

7 1269. In the course of Defendant’s business, Defendant willfully failed to disclose and
8 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
9 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
10 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
11 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
12 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
13 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
14 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
15 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
16 particular standard and quality when they are not; failing to reveal a material fact, the omission of
17 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
18 the consumer; making a representation of fact or statement of fact material to the transaction such
19 that a person reasonably believes the represented or suggested state of affairs to be other than it
20 actually is; and failing to reveal facts that are material to the transaction in light of representations of
21 fact made in a positive manner.

22 1270. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
23 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
24 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
25 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
26 including NOx, as described above.

27 1271. Plaintiff and Subclass members reasonably relied upon Defendant’s false
28 misrepresentations. They had no way of knowing that Defendant’s representations were false and

1 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
2 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
3 their own.

4 1272. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

5 1273. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
6 reasonable consumers.

7 1274. Defendant intentionally and knowingly misrepresented material facts regarding the
8 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

9 1275. Defendant knew or should have known that its conduct violated the New Mexico
10 UTPA.

11 1276. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
12 emissions systems manipulation because Defendant:

- 13 a. Possessed exclusive knowledge that it manipulated the emissions system in the
14 Affected Vehicles to turn off or limit effectiveness in normal driving
15 conditions;
- 16 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
17 c. Made incomplete representations that it manipulated the emissions system in
18 the Affected Vehicles to turn off or limit effectiveness in normal driving
19 conditions, while purposefully withholding material facts from Plaintiff and
20 the Subclass that contradicted these representations.

21 1277. Defendant had a duty to disclose that the NOx reduction system in the Affected
22 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
23 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
24 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
25 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
26 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
27 emission vehicles, efficient, and free from defects.

1 1278. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
2 members.

3 1279. Defendant's violations present a continuing risk to Plaintiff as well as to the general
4 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

5 1280. As a direct and proximate result of Defendant's violations of the New Mexico UTPA,
6 Plaintiff and the New Mexico Subclass have suffered injury in fact and/or actual damage.

7 1281. New Mexico Subclass members seek punitive damages against Defendant because
8 Defendant's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith. Because
9 Defendant's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith, it warrants
10 punitive damages.

11 1282. Because Defendant's unconscionable, willful conduct caused actual harm to New
12 Mexico Subclass members, Plaintiff and the New Mexico Subclass seek recovery of actual damages
13 or \$100, whichever is greater, discretionary treble damages, punitive damages, and reasonable
14 attorneys' fees and costs, as well as all other proper and just relief available under N.M. Stat. Ann.
15 § 57-12-10.

16 **COUNT II**

17 **FRAUDULENT CONCEALMENT**
18 **(BASED ON NEW MEXICO LAW)**

19 1283. Plaintiff incorporates by reference all preceding allegations as though fully set forth
20 herein.

21 1284. Plaintiff brings this Count on behalf of the New Mexico Subclass against FCA.

22 1285. Defendant intentionally concealed that the NOx reduction system in the Affected
23 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
24 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
25 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
26 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
27 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
28

1 and denied Plaintiff and the other Subclass members information that is highly relevant to their
2 purchasing decision.

3 1286. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
4 advertising and other forms of communication, including standard and uniform material provided
5 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
6 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
7 properly when driven in normal usage.

8 1287. Defendant knew these representations were false when made.

9 1288. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
10 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
11 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions.

14 1289. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 1290. As alleged in this Complaint, at all relevant times, Defendant has held out the
22 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
23 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
24 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
25 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
26 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
27 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
28 making other disclosures about the emission system deceptive.

1 1291. The truth about the defective emissions controls and Defendant’s manipulations of
2 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
3 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
4 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
5 members.

6 1292. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
7 had no way of knowing that Defendant’s representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles’ emissions.

11 1293. Defendant also concealed and suppressed material facts concerning what is evidently
12 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
13 compliance with federal and state clean air laws and emissions regulations that are meant to protect
14 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
15 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
16 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
17 environment. And yet, that is precisely what the Affected Vehicles are doing.

18 1294. Defendant’s false representations were material to consumers because they concerned
19 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
20 state laws and regulations regarding clean air and emissions, and also because the representations
21 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
22 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
23 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

24 1295. Defendant had a duty to disclose the emissions defect, defective design of emissions
25 controls, and violations with respect to the Affected Vehicles because details of the true facts were
26 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
27 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
28 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general

1 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
2 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
3 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
4 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
5 respect to compliance with federal and state clean air laws and emissions regulations, and
6 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
8 truth, but the entire truth. These omitted and concealed facts were material because they directly
9 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
10 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
11 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
12 or non-compliance, are material concerns to a consumer, including with respect to the emissions
13 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
14 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
15 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

16 1296. Defendant actively concealed and/or suppressed these material facts, in whole or in
17 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
18 vehicles and did not or could not comply with federal and state laws governing clean air and
19 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
20 at the expense of Plaintiff and Subclass members.

21 1297. Defendant still has not made full and adequate disclosures, and continues to defraud
22 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
23 of the Affected Vehicles.

24 1298. Plaintiff and Subclass members were unaware of the omitted material facts referenced
25 herein, and they would not have acted as they did if they had known of the concealed and/or
26 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
27 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
28 vehicles, or would have taken other affirmative steps in light of the information concealed from

1 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
2 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
3 members.

4 1299. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
5 members have sustained damage because they own vehicles that are diminished in value as a result
6 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
7 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
8 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
9 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
10 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
11 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
12 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
13 or would not have purchased or leased them at all.

14 1300. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
15 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
16 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
17 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
18 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
19 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
20 vehicles.

21 1301. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 1302. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
24 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
25 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
26 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
27 future, which amount is to be determined according to proof.

1 **FF. Claims Brought on Behalf of the New York Subclass**

2 **COUNT I**

3 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349**
4 **(N.Y. GEN. BUS. LAW § 349)**

5 1303. Plaintiff incorporates by reference all preceding allegations as though fully set forth
6 herein.

7 1304. This claim is brought on behalf of the New York Subclass against FCA.

8 1305. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or
9 practices in the conduct of any business, trade or commerce." In the course of Defendant's business,
10 Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles
12 emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more
13 pollution than a reasonable consumer would expect in light of Defendant's advertising campaign,
14 and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as
15 described above. The challenged act or practice was "consumer-oriented;" (2) that the act or practice
16 was misleading in a material way; and (3) Plaintiff suffered injury as a result of the deceptive act or
17 practice. Accordingly, Defendant has violated General Business Law § 349.

18 1306. In the course of Defendant's business, Defendant willfully failed to disclose and
19 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
20 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
21 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
22 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
23 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
24 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
25 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
26 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
27 particular standard and quality when they are not; failing to reveal a material fact, the omission of
28 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by

1 the consumer; making a representation of fact or statement of fact material to the transaction such
2 that a person reasonably believes the represented or suggested state of affairs to be other than it
3 actually is; and failing to reveal facts that are material to the transaction in light of representations of
4 fact made in a positive manner.

5 1307. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
6 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
7 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
8 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
9 including NOx, as described above.

10 1308. Plaintiff and Subclass members reasonably relied upon Defendant's false
11 misrepresentations. They had no way of knowing that Defendant's representations were false and
12 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
13 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
14 their own.

15 1309. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

16 1310. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
17 reasonable consumers.

18 1311. Defendant intentionally and knowingly misrepresented material facts regarding the
19 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

20 1312. Defendant knew or should have known that its conduct violated New York's General
21 Business Law § 349.

22 1313. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
23 emissions systems manipulation because Defendant:

- 24 a. Possessed exclusive knowledge that it manipulated the emissions system in the
25 Affected Vehicles to turn off or limit effectiveness in normal driving
26 conditions;
- 27 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 28

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

5 1314. Defendant had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
7 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
8 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
9 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
10 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
11 emission vehicles, efficient, and free from defects.

12 1315. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
13 members.

14 1316. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
15 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
16 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
17 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
18 direct and natural consequence of Defendant’s misrepresentations and omissions.

19 1317. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
20 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

21 1318. Pursuant to N.Y. Gen. Bus. Law § 349(h), Plaintiff and each Subclass member may
22 recover actual damages, in addition to three times actual damages up to \$1,000 for Defendant’s
23 willful and knowing violation of N.Y. Gen. Bus. Law § 349.

24 **COUNT II**

25 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350**
26 **(N.Y. GEN. BUS. LAW § 350)**

27 1319. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

28 1320. This claim is brought on behalf of the New York Subclass against FCA.

1 1321. New York’s General Business Law § 350 makes unlawful “[f]alse advertising in the
2 conduct of any business, trade or commerce[.]” False advertising includes “advertising, including
3 labeling, of a commodity ... if such advertising is misleading in a material respect,” taking into
4 account “the extent to which the advertising fails to reveal facts material in the light of ...
5 representations [made] with respect to the commodity.” N.Y. Gen. Bus. Law § 350-a.

6 1322. Defendant caused to be made or disseminated throughout New York, through
7 advertising, marketing, and other publications, statements that were untrue or misleading, and which
8 were known, or which by the exercise of reasonable care should have been known to Defendant, to
9 be untrue and misleading to consumers, including Plaintiff and the other Subclass members.

10 1323. Defendant has violated N.Y. Gen. Bus. Law § 350 because of the misrepresentations
11 and omissions alleged herein, including, but not limited to, Defendant’s failure to disclose that the
12 NOx reduction system in the Affected Vehicles turns off or is limited during normal driving
13 conditions.

14 1324. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
15 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
17 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
18 including NOx, as described above.

19 1325. Plaintiff and Subclass members reasonably relied upon Defendant’s false
20 misrepresentations. They had no way of knowing that Defendant’s representations were false and
21 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
22 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
23 their own.

24 1326. Defendant’s actions as set forth above occurred in the conduct of trade or commerce.

25 1327. Defendant’s unfair or deceptive acts or practices were likely to and did in fact deceive
26 reasonable consumers.

27 1328. Defendant intentionally and knowingly misrepresented material facts regarding the
28 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

1 1329. Defendant knew or should have known that its conduct violated General Business
2 Law § 350.

3 1330. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
4 emissions systems manipulation because Defendant:

- 5 a. Possessed exclusive knowledge that it manipulated the emissions system in the
6 Affected Vehicles to turn off or limit effectiveness in normal driving
7 conditions;
- 8 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 9 c. Made incomplete representations that it manipulated the emissions system in
10 the Affected Vehicles to turn off or limit effectiveness in normal driving
11 conditions, while purposefully withholding material facts from Plaintiff and
12 the Subclass that contradicted these representations.

13 1331. Defendant had a duty to disclose that the NOx reduction system in the Affected
14 Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles were
15 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
16 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
17 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
18 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
19 emission vehicles, efficient, and free from defects.

20 1332. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
21 members.

22 1333. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
23 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
24 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
25 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
26 direct and natural consequence of Defendant’s misrepresentations and omissions.

27 1334. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
28 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1 1342. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 1343. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 1344. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 1345. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 1346. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 1347. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 1348. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
17 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

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

3 1349. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
5 vehicles and did not or could not comply with federal and state laws governing clean air and
6 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
7 at the expense of Plaintiff and Subclass members.

8 1350. Defendant still has not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 1351. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 1352. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
24 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

1 1353. The value of Plaintiff’s and Subclass members’ vehicles has diminished as a result of
2 Defendant’s fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
3 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
4 requirements, all of which has greatly tarnished Defendant’s brand name, which is attached to
5 Plaintiff’s and Subclass members’ vehicles, and made any reasonable consumer reluctant to purchase
6 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
7 vehicles.

8 1354. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
9 amount to be proven at trial.

10 1355. Defendant’s acts were done wantonly, maliciously, oppressively, deliberately, with
11 intent to defraud, and in reckless disregard of Plaintiff’s and Subclass members’ rights and the
12 representations that Defendant made to them, in order to enrich Defendant. Defendant’s conduct
13 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
14 future, which amount is to be determined according to proof.

15 **GG. Claims Brought on Behalf of the North Carolina Subclass**

16 **COUNT I**

17 **VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND**
18 **DECEPTIVE ACTS AND PRACTICES ACT**
(N.C. GEN. STAT. § 75-1.1 *ET SEQ.*)

19 1356. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

20 1357. Plaintiff brings this Count on behalf of the North Carolina Subclass against FCA.

21 1358. Defendant engaged in “commerce” within the meaning of N.C. Gen. Stat. § 75-1.1(b).

22 1359. The North Carolina UDTPA broadly prohibits “unfair or deceptive acts or practices in
23 or affecting commerce.” N.C. Gen. Stat. § 75-1.1(a). In the course of Defendant’s business,
24 Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the
25 Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles
26 emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more
27 pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign,
28 and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as

1 described above. Accordingly, Defendant engaged in unfair and deceptive trade practices because it
2 (1) had the capacity or tendency to deceive, (2) offend public policy, (3) are immoral, unethical,
3 oppressive, or unscrupulous, or (4) cause substantial injury to consumers.

4 1360. In the course of Defendant's business, Defendant willfully failed to disclose and
5 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
6 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
7 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
8 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
9 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
10 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
11 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
12 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
13 particular standard and quality when they are not; failing to reveal a material fact, the omission of
14 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
15 the consumer; making a representation of fact or statement of fact material to the transaction such
16 that a person reasonably believes the represented or suggested state of affairs to be other than it
17 actually is; and failing to reveal facts that are material to the transaction in light of representations of
18 fact made in a positive manner.

19 1361. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
20 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
21 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
22 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
23 including NOx, as described above.

24 1362. Plaintiff and Subclass members reasonably relied upon Defendant's false
25 misrepresentations. They had no way of knowing that Defendant's representations were false and
26 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
27 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
28 their own.

1 1363. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

2 1364. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
3 reasonable consumers.

4 1365. Defendant intentionally and knowingly misrepresented material facts regarding the
5 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

6 1366. Defendant knew or should have known that its conduct violated the North Carolina
7 UDTPA.

8 1367. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
9 emissions systems manipulation because Defendant:

- 10 a. Possessed exclusive knowledge that it manipulated the emissions system in the
11 Affected Vehicles to turn off or limit effectiveness in normal driving
12 conditions;
- 13 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 14 c. Made incomplete representations that it manipulated the emissions system in
15 the Affected Vehicles to turn off or limit effectiveness in normal driving
16 conditions, while purposefully withholding material facts from Plaintiff and
17 the Subclass that contradicted these representations.

18 1368. Defendant had a duty to disclose that the NOx reduction system in the Affected
19 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
20 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
21 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
22 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
23 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
24 emission vehicles, efficient, and free from defects.

25 1369. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
26 members.

27 1370. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
28 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and

1 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
2 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
3 direct and natural consequence of Defendant's misrepresentations and omissions.

4 1371. Defendant's violations present a continuing risk to Plaintiff as well as to the general
5 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

6 1372. Plaintiff seeks an order for treble his actual damages, court costs, attorney's fees, and
7 any other just and proper relief available under the North Carolina Act, N.C. Gen. Stat. § 75-16.

8 1373. Plaintiff also seeks punitive damages against Defendant because Defendant's conduct
9 was malicious, willful, reckless, wanton, fraudulent and in bad faith.

10 **COUNT II**

11 **FRAUDULENT CONCEALMENT**
12 **(BASED ON NORTH CAROLINA LAW)**

13 1374. Plaintiff incorporates by reference all preceding allegations as though fully set forth
14 herein.

15 1375. This claim is brought on behalf of the North Carolina Subclass against FCA.

16 1376. Defendant intentionally concealed that the NOx reduction system in the Affected
17 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
18 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
19 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
20 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
21 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
22 and denied Plaintiff and the other Subclass members information that is highly relevant to their
23 purchasing decision.

24 1377. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
25 advertising and other forms of communication, including standard and uniform material provided
26 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
27 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
28 properly when driven in normal usage.

1 1378. Defendant knew these representations were false when made.

2 1379. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
3 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
4 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
5 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
6 Affected Vehicles turns off or is limited during normal driving conditions.

7 1380. Defendant had a duty to disclose that the NOx reduction system in the Affected
8 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
9 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
10 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
11 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
12 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
13 emission vehicles, efficient, and free from defects.

14 1381. As alleged in this Complaint, at all relevant times, Defendant has held out the
15 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
16 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
17 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
18 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
19 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
20 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
21 making other disclosures about the emission system deceptive.

22 1382. The truth about the defective emissions controls and Defendant's manipulations of
23 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
24 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
25 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
26 members.

27 1383. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
28 had no way of knowing that Defendant's representations were false and/or misleading. As

1 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
3 true facts about the Affected Vehicles' emissions.

4 1384. Defendant also concealed and suppressed material facts concerning what is evidently
5 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
6 compliance with federal and state clean air laws and emissions regulations that are meant to protect
7 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
8 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
9 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
10 environment. And yet, that is precisely what the Affected Vehicles are doing.

11 1385. Defendant's false representations were material to consumers because they concerned
12 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
13 state laws and regulations regarding clean air and emissions, and also because the representations
14 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
15 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
16 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

17 1386. Defendant had a duty to disclose the emissions defect, defective design of emissions
18 controls, and violations with respect to the Affected Vehicles because details of the true facts were
19 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
20 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
21 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
22 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
23 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
24 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
25 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
26 respect to compliance with federal and state clean air laws and emissions regulations, and
27 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
28 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial

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

9 1387. Defendant actively concealed and/or suppressed these material facts, in whole or in
10 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
11 vehicles and did not or could not comply with federal and state laws governing clean air and
12 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
13 at the expense of Plaintiff and Subclass members.

14 1388. Defendant still has not made full and adequate disclosures, and continues to defraud
15 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
16 of the Affected Vehicles.

17 1389. Plaintiff and Subclass members were unaware of the omitted material facts referenced
18 herein, and they would not have acted as they did if they had known of the concealed and/or
19 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
20 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
21 vehicles, or would have taken other affirmative steps in light of the information concealed from
22 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
23 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
24 members.

25 1390. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
26 members have sustained damage because they own vehicles that are diminished in value as a result
27 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
28 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the

1 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
2 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
3 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
4 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
5 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
6 or would not have purchased or leased them at all.

7 1391. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
8 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
9 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
10 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
11 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
12 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
13 vehicles.

14 1392. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
15 amount to be proven at trial.

16 1393. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
17 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
18 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
19 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
20 future, which amount is to be determined according to proof.

21 **HH. Claims Brought on Behalf of the North Dakota Subclass**

22 **COUNT I**

23 **VIOLATION OF THE NORTH DAKOTA CONSUMER FRAUD ACT**
24 **(N.D. CENT. CODE § 51-15-02)**

25 1394. Plaintiff incorporates by reference all preceding allegations as though fully set forth
26 herein.

27 1395. This claim is brought on behalf of the North Dakota Subclass against FCA.

1 1396. Plaintiff, North Dakota Subclass members, and Defendant are “persons” within the
2 meaning of N.D. Cent. Code § 51-15-02(4).

3 1397. Defendant engaged in the “sale” of “merchandise” within the meaning of N.D. Cent.
4 Code § 51-15-02(3), (5).

5 1398. The North Dakota Consumer Fraud Act (“North Dakota CFA”) makes unlawful “[t]he
6 act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false
7 promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or
8 advertisement of any merchandise.” N.D. Cent. Code § 51-15-02. As set forth above and below,
9 Defendant committed deceptive acts or practices, with the intent that North Dakota Subclass
10 members rely thereon in connection with their purchase or lease of the Affected Vehicles.

11 1399. In the course of Defendant’s business, Defendant willfully failed to disclose and
12 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
13 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
14 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
15 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
16 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
17 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
18 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
19 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
20 particular standard and quality when they are not; failing to reveal a material fact, the omission of
21 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
22 the consumer; making a representation of fact or statement of fact material to the transaction such
23 that a person reasonably believes the represented or suggested state of affairs to be other than it
24 actually is; and failing to reveal facts that are material to the transaction in light of representations of
25 fact made in a positive manner.

26 1400. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
27 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
28 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions

1 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
2 including NOx, as described above.

3 1401. Plaintiff and Subclass members reasonably relied upon Defendant's false
4 misrepresentations. They had no way of knowing that Defendant's representations were false and
5 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
6 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own.

8 1402. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

9 1403. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
10 reasonable consumers.

11 1404. Defendant intentionally and knowingly misrepresented material facts regarding the
12 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

13 1405. Defendant knew or should have known that its conduct violated the North Dakota
14 CFA.

15 1406. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
16 emissions systems manipulation because Defendant:

- 17 a. Possessed exclusive knowledge that it manipulated the emissions system in the
18 Affected Vehicles to turn off or limit effectiveness in normal driving
19 conditions;
- 20 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 21 c. Made incomplete representations that it manipulated the emissions system in
22 the Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions, while purposefully withholding material facts from Plaintiff and
24 the Subclass that contradicted these representations.

25 1407. Defendant had a duty to disclose that the NOx reduction system in the Affected
26 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
27 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
28 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and

1 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
2 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
3 emission vehicles, efficient, and free from defects.

4 1408. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
5 members.

6 1409. Defendant's violations present a continuing risk to Plaintiff as well as to the general
7 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

8 1410. As a direct and proximate result of Defendant's violations of the North Dakota CFA,
9 Plaintiff and the North Dakota Subclass have suffered injury in fact and/or actual damage.

10 1411. North Dakota Subclass members seek punitive damages against Defendant because
11 Defendant's conduct was egregious. Defendant's egregious conduct warrants punitive damages.

12 1412. Further, Defendant knowingly committed the conduct described above, and thus,
13 under N.D. Cent. Code § 51-15-09, Defendant is liable to Plaintiff and the North Dakota Subclass for
14 treble damages in amounts to be proven at trial, as well as attorneys' fees, costs, and disbursements.
15 Plaintiff further seeks an order enjoining Defendant's unfair and/or deceptive acts or practices, and
16 other just and proper available relief under the North Dakota CFA.

17 **COUNT II**

18 **FRAUDULENT CONCEALMENT** 19 **(BASED ON NORTH DAKOTA LAW)**

20 1413. Plaintiff incorporates by reference all preceding allegations as though fully set forth
21 herein.

22 1414. Plaintiff brings this Count on behalf of the North Dakota Subclass against FCA.

23 1415. Defendant intentionally concealed that the NOx reduction system in the Affected
24 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
25 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
26 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
27 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
28 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth

1 and denied Plaintiff and the other Subclass members information that is highly relevant to their
2 purchasing decision.

3 1416. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
4 advertising and other forms of communication, including standard and uniform material provided
5 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
6 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
7 properly when driven in normal usage.

8 1417. Defendant knew these representations were false when made.

9 1418. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
10 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
11 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions.

14 1419. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 1420. As alleged in this Complaint, at all relevant times, Defendant has held out the
22 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
23 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
24 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
25 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
26 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
27 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
28 making other disclosures about the emission system deceptive.

1 1421. The truth about the defective emissions controls and Defendant’s manipulations of
2 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
3 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
4 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
5 members.

6 1422. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
7 had no way of knowing that Defendant’s representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles’ emissions.

11 1423. Defendant also concealed and suppressed material facts concerning what is evidently
12 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
13 compliance with federal and state clean air laws and emissions regulations that are meant to protect
14 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
15 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
16 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
17 environment. And yet, that is precisely what the Affected Vehicles are doing.

18 1424. Defendant’s false representations were material to consumers because they concerned
19 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
20 state laws and regulations regarding clean air and emissions, and also because the representations
21 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
22 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
23 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

24 1425. Defendant had a duty to disclose the emissions defect, defective design of emissions
25 controls, and violations with respect to the Affected Vehicles because details of the true facts were
26 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
27 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
28 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general

1 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
2 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
3 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
4 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
5 respect to compliance with federal and state clean air laws and emissions regulations, and
6 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
8 truth, but the entire truth. These omitted and concealed facts were material because they directly
9 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
10 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
11 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
12 or non-compliance, are material concerns to a consumer, including with respect to the emissions
13 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
14 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
15 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

16 1426. Defendant actively concealed and/or suppressed these material facts, in whole or in
17 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
18 vehicles and did not or could not comply with federal and state laws governing clean air and
19 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
20 at the expense of Plaintiff and Subclass members.

21 1427. Defendant still has not made full and adequate disclosures, and continues to defraud
22 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
23 of the Affected Vehicles.

24 1428. Plaintiff and Subclass members were unaware of the omitted material facts referenced
25 herein, and they would not have acted as they did if they had known of the concealed and/or
26 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
27 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
28 vehicles, or would have taken other affirmative steps in light of the information concealed from

1 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
2 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
3 members.

4 1429. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
5 members have sustained damage because they own vehicles that are diminished in value as a result
6 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
7 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
8 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
9 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
10 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
11 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
12 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
13 or would not have purchased or leased them at all.

14 1430. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
15 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
16 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
17 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
18 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
19 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
20 vehicles.

21 1431. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 1432. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
24 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
25 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
26 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
27 future, which amount is to be determined according to proof.

1 **II. Claims Brought on Behalf of the Ohio Subclass**

2 **COUNT I**

3 **VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT**
4 **(OHIO REV. CODE § 1345.01 ET SEQ.)**

5 1433. Plaintiff incorporates by reference all preceding allegations as though fully set forth
6 herein.

7 1434. This claim is brought on behalf of the Ohio Subclass against FCA.

8 1435. Plaintiff and the other Ohio Subclass members are “consumers” as defined by the
9 Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (“Ohio CSPA”). Defendant is a
10 “supplier” as defined by the Ohio CSPA. Plaintiff’s and the other Ohio Subclass members’
11 purchases or leases of Affected Vehicles were “consumer transactions” as defined by the Ohio
12 CSPA.

13 1436. The Ohio CSPA, Ohio Rev. Code § 1345.02, broadly prohibits unfair or deceptive
14 acts or practices in connection with a consumer transaction. Specifically, and without limitation of
15 the broad prohibition, the Act prohibits suppliers from representing (i) that goods have characteristics
16 or uses or benefits which they do not have; (ii) that their goods are of a particular quality or grade
17 they are not; and (iii) the subject of a consumer transaction has been supplied in accordance with a
18 previous representation, if it has not. *Id.* Defendant’s conduct as alleged above and below
19 constitutes unfair and/or deceptive consumer sales practices in violation of Ohio Rev. Code
20 § 1345.02.

21 1437. In the course of Defendant’s business, Defendant willfully failed to disclose and
22 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
23 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
24 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
25 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
26 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
27 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
28 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,

1 uses, benefits, and qualities which they do not have; representing the that Affected Vehicles are of a
2 particular standard and quality when they are not; failing to reveal a material fact, the omission of
3 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
4 the consumer; making a representation of fact or statement of fact material to the transaction such
5 that a person reasonably believes the represented or suggested state of affairs to be other than it
6 actually is; and failing to reveal facts that are material to the transaction in light of representations of
7 fact made in a positive manner.

8 1438. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
9 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
10 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
11 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
12 including NOx, as described above.

13 1439. Plaintiff and Subclass members reasonably relied upon Defendant's false
14 misrepresentations. They had no way of knowing that Defendant's representations were false and
15 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
16 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
17 their own.

18 1440. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

19 1441. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
20 reasonable consumers.

21 1442. Defendant intentionally and knowingly misrepresented material facts regarding the
22 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

23 1443. Defendant knew or should have known that its conduct violated the Ohio CSPA.

24 1444. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
25 emissions systems manipulation because Defendant:

- 26 a. Possessed exclusive knowledge that it manipulated the emissions system in the
27 Affected Vehicles to turn off or limit effectiveness in normal driving
28 conditions;

- 1 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 2 c. Made incomplete representations that it manipulated the emissions system in
- 3 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 4 conditions, while purposefully withholding material facts from Plaintiff and
- 5 the Subclass that contradicted these representations.

6 1445. Defendant had a duty to disclose that the NOx reduction system in the Affected
7 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
8 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
9 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
10 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
11 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
12 emission vehicles, efficient, and free from defects.

13 1446. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
14 members.

15 1447. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
16 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
17 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
18 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
19 direct and natural consequence of Defendant’s misrepresentations and omissions.

20 1448. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
21 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

22 1449. Plaintiff and the Subclass sustained damages as a result of Defendant’s unlawful acts
23 and are, therefore, entitled to damages and other relief as provided under the Ohio CSPA.

24 1450. Plaintiff also seeks court costs and attorneys’ fees as a result of Defendant’s violations
25 of the OCSPA as provided in Ohio Rev. Code § 1345.09.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON OHIO LAW)**

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1451. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1452. This claim is brought on behalf of the Ohio Subclass against FCA.

1453. Defendant 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 Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1454. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was 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. Defendant knew these representations were false when made.

1456. The Affected Vehicles purchased or leased by Plaintiff 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 Defendant's 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. Defendant 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 the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1458. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 1459. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 1460. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 1461. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
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1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 1462. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1463. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1464. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1465. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1466. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1467. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1468. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
5 vehicles.

6 1469. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
7 amount to be proven at trial.

8 1470. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
12 future, which amount is to be determined according to proof.

13 **JJ. Claims Brought on Behalf of the Oklahoma Subclass**

14 **COUNT I**

15 **VIOLATION OF OKLAHOMA CONSUMER PROTECTION ACT**
16 **(OKLA. STAT. TIT. 15 § 751 ET SEQ.)**

17 1471. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

18 1472. Plaintiff brings this Count on behalf of the Oklahoma Subclass against FCA.

19 1473. Plaintiff and the Oklahoma Subclass members are "persons" under the Oklahoma
20 Consumer Protection Act ("Oklahoma CPA"), Okla. Stat. tit. 15 § 752.

21 1474. Defendant is a "person," "corporation," or "association" within the meaning of Okla.
22 Stat. tit. 15 § 15-751(1).

23 1475. The sale or lease of the Affected Vehicles to the Oklahoma Subclass members was a
24 "consumer transaction" within the meaning of Okla. Stat. tit. 15 § 752, and Defendant's actions as
25 set forth herein occurred in the conduct of trade or commerce.

26 1476. The Oklahoma CPA declares unlawful, *inter alia*, the following acts or practices
27 when committed in the course of business: "mak[ing] a false or misleading representation,
28 knowingly or with reason to know, as to the characteristics, ... uses, [or] benefits, of the subject of a

1 consumer transaction,” or making a false representation, “knowingly or with reason to know, that the
2 subject of a consumer transaction is of a particular standard, style or model, if it is of another or
3 “[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer transaction with intent
4 not to sell it as advertised;” and otherwise committing “an unfair or deceptive trade practice.” *See*
5 Okla. Stat. tit. 15, § 753.

6 1477. In the course of Defendant’s business, Defendant willfully failed to disclose and
7 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
8 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
9 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
10 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
11 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
12 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
13 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
14 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
15 particular standard and quality when they are not; failing to reveal a material fact, the omission of
16 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
17 the consumer; making a representation of fact or statement of fact material to the transaction such
18 that a person reasonably believes the represented or suggested state of affairs to be other than it
19 actually is; and failing to reveal facts that are material to the transaction in light of representations of
20 fact made in a positive manner.

21 1478. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above.

26 1479. Plaintiff and Subclass members reasonably relied upon Defendant’s false
27 misrepresentations. They had no way of knowing that Defendant’s representations were false and
28 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 1480. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 1481. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 1482. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 1483. Defendant knew or should have known that its conduct violated the Oklahoma CPA.

9 1484. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 1485. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 1486. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1 1487. Plaintiff and the Oklahoma Subclass suffered ascertainable loss caused by
2 Defendant's misrepresentations and concealment of and failure to disclose material information.

3 1488. Defendant's unlawful acts and practices complained of herein affect the public
4 interest.

5 1489. As a direct and proximate result of Defendant's violations of the Oklahoma CPA,
6 Plaintiff and the Oklahoma Subclass have suffered injury in fact and/or actual damage.

7 1490. Defendant's conduct as alleged herein was unconscionable because (1) Defendant,
8 knowingly or with reason to know, took advantage of consumers reasonably unable to protect their
9 interests because of their age, physical infirmity, ignorance, illiteracy, inability to understand the
10 language of an agreement or similar factor; (2) at the time the consumer transaction was entered into,
11 Defendant knew or had reason to know that price grossly exceeded the price at which similar
12 vehicles were readily obtainable in similar transactions by like consumers; and (3) Defendant knew
13 or had reason to know that the transaction Defendant induced the consumer to enter into was
14 excessively one-sided in favor of Defendant.

15 1491. Because Defendant's unconscionable conduct caused injury to Oklahoma Subclass
16 members, Plaintiff and the Oklahoma Subclass seek recovery of actual damages, discretionary
17 penalties up to \$2,000 per violation, punitive damages, and reasonable attorneys' fees, under Okla.
18 Stat. tit. 15 § 761.1. Plaintiff and the Oklahoma Subclass further seek an order enjoining
19 Defendant's unfair and/or deceptive acts or practices, and any other just and proper relief available
20 under the Oklahoma CPA.

21 **COUNT II**

22 **FRAUDULENT CONCEALMENT**
23 **(BASED ON OKLAHOMA LAW)**

24 1492. Plaintiff incorporates by reference all preceding allegations as though fully set forth
25 herein.

26 1493. Plaintiff brings this Count on behalf of the Oklahoma Subclass against FCA.

27 1494. Defendant intentionally concealed that the NOx reduction system in the Affected
28 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had

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

7 1495. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
8 advertising and other forms of communication, including standard and uniform material provided
9 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
10 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
11 properly when driven in normal usage.

12 1496. Defendant knew these representations were false when made.

13 1497. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
14 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
15 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
16 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
17 Affected Vehicles turns off or is limited during normal driving conditions.

18 1498. Defendant had a duty to disclose that the NOx reduction system in the Affected
19 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
20 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
21 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
22 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
23 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
24 emission vehicles, efficient, and free from defects.

25 1499. As alleged in this Complaint, at all relevant times, Defendant has held out the
26 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
27 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
28 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during

1 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
2 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
3 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
4 making other disclosures about the emission system deceptive.

5 1500. The truth about the defective emissions controls and Defendant’s manipulations of
6 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
7 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
8 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
9 members.

10 1501. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
11 had no way of knowing that Defendant’s representations were false and/or misleading. As
12 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
13 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
14 true facts about the Affected Vehicles’ emissions.

15 1502. Defendant also concealed and suppressed material facts concerning what is evidently
16 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
17 compliance with federal and state clean air laws and emissions regulations that are meant to protect
18 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
19 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
20 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
21 environment. And yet, that is precisely what the Affected Vehicles are doing.

22 1503. Defendant’s false representations were material to consumers because they concerned
23 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
24 state laws and regulations regarding clean air and emissions, and also because the representations
25 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
26 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
27 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.
28

1 1504. Defendant had a duty to disclose the emissions defect, defective design of emissions
2 controls, and violations with respect to the Affected Vehicles because details of the true facts were
3 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
4 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
5 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
6 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
7 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
8 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
9 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
10 respect to compliance with federal and state clean air laws and emissions regulations, and
11 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
12 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
13 truth, but the entire truth. These omitted and concealed facts were material because they directly
14 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
15 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
16 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
17 or non-compliance, are material concerns to a consumer, including with respect to the emissions
18 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
19 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
20 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

21 1505. Defendant actively concealed and/or suppressed these material facts, in whole or in
22 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
23 vehicles and did not or could not comply with federal and state laws governing clean air and
24 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
25 at the expense of Plaintiff and Subclass members.

26 1506. Defendant still has not made full and adequate disclosures, and continues to defraud
27 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
28 of the Affected Vehicles.

1 1507. Plaintiff and Subclass members were unaware of the omitted material facts referenced
2 herein, and they would not have acted as they did if they had known of the concealed and/or
3 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
4 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
5 vehicles, or would have taken other affirmative steps in light of the information concealed from
6 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
7 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
8 members.

9 1508. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
10 members have sustained damage because they own vehicles that are diminished in value as a result
11 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
12 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
13 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
14 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
15 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
16 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
17 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
18 or would not have purchased or leased them at all.

19 1509. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
20 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
21 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
22 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
23 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
24 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
25 vehicles.

26 1510. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
27 amount to be proven at trial.

1 1511. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
2 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
3 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
4 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
5 future, which amount is to be determined according to proof.

6 **KK. Claims Brought on Behalf of the Pennsylvania Subclass**

7 **COUNT I**

8 **VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND**
9 **CONSUMER PROTECTION LAW**
(73 P.S. § 201-1 *ET SEQ.*)

10 1512. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

11 1513. Plaintiff brings this Count on behalf of the Pennsylvania Subclass against FCA.

12 1514. Plaintiff purchased his Affected Vehicle primarily for personal, family or household
13 purposes within the meaning of 73 P.S. § 201-9.2.

14 1515. All of the acts complained of herein were perpetrated by Defendant in the course of
15 trade or commerce within the meaning of 73 P.S. § 201-2(3).

16 1516. The Pennsylvania Unfair Trade Practices and Consumer Protection Law
17 ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i) "Representing
18 that goods or services have ... characteristics, ... [b]enefits or qualities that they do not have;" (ii)
19 "Representing that goods or services are of a particular standard, quality or grade ... if they are of
20 another;" (iii) "Advertising goods or services with intent not to sell them as advertised;" and (iv)
21 "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or
22 misunderstanding." 73 P.S. § 201-2(4).

23 1517. In the course of Defendant's business, Defendant willfully failed to disclose and
24 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
25 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
26 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
27 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
28 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,

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

10 1518. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
11 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
12 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
13 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
14 including NOx, as described above.

15 1519. Plaintiff and Subclass members reasonably relied upon Defendant's false
16 misrepresentations. They had no way of knowing that Defendant's representations were false and
17 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
18 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
19 their own.

20 1520. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

21 1521. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
22 reasonable consumers.

23 1522. Defendant intentionally and knowingly misrepresented material facts regarding the
24 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

25 1523. Defendant knew or should have known that its conduct violated the Pennsylvania
26 CPL.

27 1524. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
28 emissions systems manipulation because Defendant:

- 1 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 2 Affected Vehicles to turn off or limit effectiveness in normal driving
- 3 conditions;
- 4 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 5 c. Made incomplete representations that it manipulated the emissions system in
- 6 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 7 conditions, while purposefully withholding material facts from Plaintiff and
- 8 the Subclass that contradicted these representations.

9 1525. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 1526. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
17 members.

18 1527. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
19 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
20 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
21 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
22 direct and natural consequence of Defendant’s misrepresentations and omissions.

23 1528. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
24 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

25 1529. Defendant is liable to Plaintiff and the Pennsylvania Subclass for treble their actual
26 damages or \$100, whichever is greater, and attorneys’ fees and costs. 73 P.S. § 201-9.2(a). Plaintiff
27 and the Pennsylvania Subclass members are also entitled to an award of punitive damages given that
28

1 Defendant's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference
2 to the rights of others.

3 **COUNT II**

4 **FRAUDULENT CONCEALMENT**
5 **(BASED ON PENNSYLVANIA LAW)**

6 1530. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

7 1531. This claim is brought on behalf of the Pennsylvania Subclass against FCA.

8 1532. Defendant intentionally concealed that the NOx reduction system in the Affected
9 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
10 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
11 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
13 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
14 and denied Plaintiff and the other Subclass members information that is highly relevant to their
15 purchasing decision.

16 1533. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
17 advertising and other forms of communication, including standard and uniform material provided
18 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
19 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
20 properly when driven in normal usage.

21 1534. Defendant knew these representations were false when made.

22 1535. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
23 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
24 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
25 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
26 Affected Vehicles turns off or is limited during normal driving conditions.

27 1536. Defendant had a duty to disclose that the NOx reduction system in the Affected
28 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were

1 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
2 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
3 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
4 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
5 emission vehicles, efficient, and free from defects.

6 1537. As alleged in this Complaint, at all relevant times, Defendant has held out the
7 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
8 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
9 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
10 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
11 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
12 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
13 making other disclosures about the emission system deceptive.

14 1538. The truth about the defective emissions controls and Defendant’s manipulations of
15 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
16 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
17 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
18 members.

19 1539. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
20 had no way of knowing that Defendant’s representations were false and/or misleading. As
21 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
22 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
23 true facts about the Affected Vehicles’ emissions.

24 1540. Defendant also concealed and suppressed material facts concerning what is evidently
25 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
26 compliance with federal and state clean air laws and emissions regulations that are meant to protect
27 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
28 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant

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

3 1541. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1542. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1543. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1544. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1545. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1546. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1547. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
5 vehicles.

6 1548. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
7 amount to be proven at trial.

8 1549. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
12 future, which amount is to be determined according to proof.

13 **LL. Claims Brought on Behalf of the Rhode Island Subclass**

14 **COUNT I**

15 **VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES**
16 **AND CONSUMER PROTECTION ACT**
(R.I. GEN. LAWS § 6-13.1 ET SEQ.)

17 1550. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

18 1551. Plaintiff brings this Count on behalf of the Rhode Island Subclass against FCA.

19 1552. Plaintiff is a person who purchased an Affected Vehicle primarily for personal,
20 family, or household purposes within the meaning of R.I. Gen. Laws § 6-13.1-5.2(a).

21 1553. Rhode Island's Unfair Trade Practices and Consumer Protection Act ("Rhode Island
22 CPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce"
23 including: "(v) Representing that goods or services have sponsorship, approval, characteristics,
24 ingredients, uses, benefits, or quantities that they do not have"; "(vii) Representing that goods or
25 services are of a particular standard, quality, or grade, ... if they are of another"; "(ix) Advertising
26 goods or services with intent not to sell them as advertised"; "(xii) Engaging in any other conduct
27 that similarly creates a likelihood of confusion or of misunderstanding"; "(xiii) Engaging in any act
28 or practice that is unfair or deceptive to the consumer"; and "(xiv) Using any other methods, acts or

1 practices which mislead or deceive members of the public in a material respect.” R.I. Gen. Laws § 6-
2 13.1-1(6).

3 1554. Defendant engaged in unlawful trade practices, including: (1) representing that the
4 Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2)
5 representing that the Affected Vehicles are of a particular standard and quality when they are not; (3)
6 advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) otherwise
7 engaging in conduct that is unfair or deceptive and likely to deceive.

8 1555. Defendant’s actions as set forth above occurred in the conduct of trade or commerce.

9 1556. In the course of Defendant’s business, Defendant willfully failed to disclose and
10 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
11 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
12 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
13 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
14 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
15 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
16 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
17 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
18 particular standard and quality when they are not; failing to reveal a material fact, the omission of
19 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
20 the consumer; making a representation of fact or statement of fact material to the transaction such
21 that a person reasonably believes the represented or suggested state of affairs to be other than it
22 actually is; and failing to reveal facts that are material to the transaction in light of representations of
23 fact made in a positive manner.

24 1557. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
25 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
26 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
27 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
28 including NOx, as described above.

1 1558. Plaintiff and Subclass members reasonably relied upon Defendant’s false
2 misrepresentations. They had no way of knowing that Defendant’s representations were false and
3 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
4 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
5 their own.

6 1559. Defendant’s actions as set forth above occurred in the conduct of trade or commerce.

7 1560. Defendant’s unfair or deceptive acts or practices were likely to and did in fact deceive
8 reasonable consumers.

9 1561. Defendant intentionally and knowingly misrepresented material facts regarding the
10 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

11 1562. Defendant knew or should have known that its conduct violated the Rhode Island
12 CPA.

13 1563. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
14 emissions systems manipulation because Defendant:

- 15 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 16 Affected Vehicles to turn off or limit effectiveness in normal driving
- 17 conditions;
- 18 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 19 c. Made incomplete representations that it manipulated the emissions system in
- 20 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 21 conditions, while purposefully withholding material facts from Plaintiff and
- 22 the Subclass that contradicted these representations.

23 1564. Defendant had a duty to disclose that the NOx reduction system in the Affected
24 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
25 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
26 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
27 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
28

1 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
2 emission vehicles, efficient, and free from defects.

3 1565. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
4 members.

5 1566. Plaintiff and the Rhode Island Subclass suffered ascertainable loss caused by
6 Defendant's misrepresentations and concealment of and failure to disclose material information.
7 Plaintiff who purchased the Affected Vehicles either would have paid less for their vehicles or would
8 not have purchased or leased them at all.

9 1654. Defendant's unlawful acts and practices complained of herein affect the public interest.

10 1655. As a direct and proximate result of Defendant's violations of the Rhode Island CPA,
11 Plaintiff and the Rhode Island Subclass have suffered injury in fact and/or actual damage.

12 1656. Plaintiff and Rhode Island Subclass members are entitled to recover the greater of
13 actual damages or \$200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a). Plaintiff also seeks punitive
14 damages in the discretion of the Court because of Defendant's egregious disregard of consumer and
15 public safety and their long-running concealment of the serious safety defects and their tragic
16 consequences.

17 **COUNT II**

18 **FRAUDULENT CONCEALMENT** 19 **(BASED ON RHODE ISLAND LAW)**

20 1567. Plaintiff incorporates by reference all preceding allegations as though fully set forth
21 herein.

22 1568. Plaintiff brings this Count on behalf of the Rhode Island Subclass against FCA.

23 1569. Defendant intentionally concealed that the NOx reduction system in the Affected
24 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
25 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
26 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
27 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
28 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth

1 and denied Plaintiff and the other Subclass members information that is highly relevant to their
2 purchasing decision.

3 1570. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
4 advertising and other forms of communication, including standard and uniform material provided
5 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
6 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
7 properly when driven in normal usage.

8 1571. Defendant knew these representations were false when made.

9 1572. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
10 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
11 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions.

14 1573. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 1574. As alleged in this Complaint, at all relevant times, Defendant has held out the
22 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
23 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
24 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
25 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
26 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
27 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
28 making other disclosures about the emission system deceptive.

1 1575. The truth about the defective emissions controls and Defendant’s manipulations of
2 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
3 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
4 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
5 members.

6 1576. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
7 had no way of knowing that Defendant’s representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles’ emissions.

11 1577. Defendant also concealed and suppressed material facts concerning what is evidently
12 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
13 compliance with federal and state clean air laws and emissions regulations that are meant to protect
14 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
15 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
16 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
17 environment. And yet, that is precisely what the Affected Vehicles are doing.

18 1578. Defendant’s false representations were material to consumers because they concerned
19 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
20 state laws and regulations regarding clean air and emissions, and also because the representations
21 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
22 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
23 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

24 1579. Defendant had a duty to disclose the emissions defect, defective design of emissions
25 controls, and violations with respect to the Affected Vehicles because details of the true facts were
26 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
27 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
28 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general

1 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
2 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
3 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
4 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
5 respect to compliance with federal and state clean air laws and emissions regulations, and
6 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
8 truth, but the entire truth. These omitted and concealed facts were material because they directly
9 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
10 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
11 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
12 or non-compliance, are material concerns to a consumer, including with respect to the emissions
13 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
14 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
15 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

16 1580. Defendant actively concealed and/or suppressed these material facts, in whole or in
17 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
18 vehicles and did not or could not comply with federal and state laws governing clean air and
19 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
20 at the expense of Plaintiff and Subclass members.

21 1581. Defendant still has not made full and adequate disclosures, and continues to defraud
22 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
23 of the Affected Vehicles.

24 1582. Plaintiff and Subclass members were unaware of the omitted material facts referenced
25 herein, and they would not have acted as they did if they had known of the concealed and/or
26 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
27 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
28 vehicles, or would have taken other affirmative steps in light of the information concealed from

1 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
2 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
3 members.

4 1583. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
5 members have sustained damage because they own vehicles that are diminished in value as a result
6 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
7 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
8 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
9 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
10 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
11 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
12 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
13 or would not have purchased or leased them at all.

14 1584. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
15 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
16 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
17 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
18 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
19 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
20 vehicles.

21 1585. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 1586. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
24 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
25 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
26 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
27 future, which amount is to be determined according to proof.

1 **MM. Claims Brought on Behalf of the South Carolina Subclass**

2 **COUNT I**

3 **VIOLATIONS OF THE SOUTH CAROLINA**
4 **UNFAIR TRADE PRACTICES ACT**
5 **(S.C. CODE ANN. § 39-5-10 ET SEQ.)**

6 1587. Plaintiff incorporates by reference all preceding allegations as though fully set forth
7 herein.

8 1588. This claim is brought on behalf of the South Carolina Subclass against FCA.

9 1589. Defendant is a “person” under S.C. Code Ann. § 39-5-10.

10 1590. The South Carolina Unfair Trade Practices Act (“South Carolina UTPA”) prohibits
11 “unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C. Code Ann. §
12 39-5-20(a).

13 1591. In the course of Defendant’s business, Defendant willfully failed to disclose and
14 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
15 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
16 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
17 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
18 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
19 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
20 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
21 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
22 particular standard and quality when they are not; failing to reveal a material fact, the omission of
23 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
24 the consumer; making a representation of fact or statement of fact material to the transaction such
25 that a person reasonably believes the represented or suggested state of affairs to be other than it
26 actually is; and failing to reveal facts that are material to the transaction in light of representations of
27 fact made in a positive manner.

28 1592. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
members were deceived by Defendant’s failure to disclose that the NOx reduction system in the

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

4 1593. Plaintiff and Subclass members reasonably relied upon Defendant's false
5 misrepresentations. They had no way of knowing that Defendant's representations were false and
6 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
7 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
8 their own.

9 1594. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

10 1595. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
11 reasonable consumers.

12 1596. Defendant intentionally and knowingly misrepresented material facts regarding the
13 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

14 1597. Defendant knew or should have known that its conduct violated the South Carolina
15 UTPA.

16 1598. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
17 emissions systems manipulation because Defendant:

- 18 a. Possessed exclusive knowledge that it manipulated the emissions system in the
19 Affected Vehicles to turn off or limit effectiveness in normal driving
20 conditions;
- 21 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 22 c. Made incomplete representations that it manipulated the emissions system in
23 the Affected Vehicles to turn off or limit effectiveness in normal driving
24 conditions, while purposefully withholding material facts from Plaintiff and
25 the Subclass that contradicted these representations.

26 1599. Defendant had a duty to disclose that the NOx reduction system in the Affected
27 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
28 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1600. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
6 members.

7 1601. Plaintiff and the South Carolina Subclass suffered ascertainable loss caused by
8 Defendant's misrepresentations and concealment of and failure to disclose material information.
9 Plaintiff who purchased the Affected Vehicles either would have paid less for their vehicles or would
10 not have purchased or leased them at all.

11 1602. Defendant's unlawful acts and practices complained of herein affect the public interest.

12 1603. As a direct and proximate result of Defendant's violations of the South Carolina
13 UTPA, Plaintiff and the South Carolina Subclass have suffered injury in fact and/or actual damage.

14 1604. Pursuant to S.C. Code Ann. § 39-5-140(a), Plaintiff seeks monetary relief against
15 Defendant to recover for economic losses. Because Defendant's actions were willful and knowing,
16 Plaintiff's damages should be trebled. *Id.*

17 1605. Plaintiff further alleges that Defendant's malicious and deliberate conduct warrants an
18 assessment of punitive damages because Defendant carried out despicable conduct with willful and
19 conscious disregard of the rights and safety of others, subjecting Plaintiff and the Subclass to cruel
20 and unjust hardship as a result.

21 COUNT II

22 VIOLATIONS OF THE SOUTH CAROLINA REGULATION OF 23 MANUFACTURERS, DISTRIBUTORS, AND DEALERS ACT (S.C. CODE ANN. § 56-15-10 *ET SEQ.*)

24 1606. Plaintiff realleges and incorporates by reference all paragraphs as though fully set
25 forth herein.

26 1607. This claim is brought only on behalf of the South Carolina Subclass against FCA.

27 1608. Defendant was a "manufacturer" as set forth in S.C. Code Ann. § 56-15-10, as each
28 was engaged in the business of manufacturing or assembling new and unused motor vehicles.

1 1609. Defendant committed unfair or deceptive acts or practices that violated the South
2 Carolina Regulation of Manufacturers, Distributors, and Dealers Act (“Dealers Act”), S.C. Code
3 Ann. § 56-15-30.

4 1610. Defendant engaged in actions which were arbitrary, in bad faith, unconscionable, and
5 which caused damage to Plaintiff, the South Carolina Subclass, and to the public.

6 1611. Defendant’s bad faith and unconscionable actions include, but are not limited to: (1)
7 representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they
8 do not have, (2) representing that the Affected Vehicles are of a particular standard, quality, and
9 grade when they are not, (3) advertising the Affected Vehicles with the intent not to sell them as
10 advertised, (4) representing that a transaction involving the Affected Vehicles confers or involves
11 rights, remedies, and obligations which it does not, and (5) representing that the subject of a
12 transaction involving the Affected Vehicles has been supplied in accordance with a previous
13 representation when it has not.

14 **COUNT III**

15 **FRAUDULENT CONCEALMENT**
16 **(BASED ON SOUTH CAROLINA LAW)**

17 1612. Plaintiff incorporates by reference all preceding allegations as though fully set forth
18 herein.

19 1613. Plaintiff brings this Count on behalf of the South Carolina Subclass against FCA.

20 1614. Defendant intentionally concealed that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
22 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
23 emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s
24 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
25 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
26 and denied Plaintiff and the other Subclass members information that is highly relevant to their
27 purchasing decision.

1 1615. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 1616. Defendant knew these representations were false when made.

7 1617. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
8 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
9 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
10 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions.

12 1618. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 1619. As alleged in this Complaint, at all relevant times, Defendant has held out the
20 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
21 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
22 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
23 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
24 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
25 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
26 making other disclosures about the emission system deceptive.

27 1620. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1621. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1622. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1623. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1624. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1625. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1626. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1627. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1628. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1629. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1630. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1631. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

1 **NN. Claims Brought on Behalf of the Tennessee Subclass**

2 **COUNT I**

3 **VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT**
4 **(TENN. CODE ANN. § 47-18-101 ET SEQ.)**

5 1632. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

6 1633. Plaintiff brings this Count on behalf of the Tennessee Subclass against FCA.

7 1634. Plaintiff and Tennessee Subclass members are “natural persons” and “consumers”
8 within the meaning of Tenn. Code Ann. § 47-18-103(2).

9 1635. Defendant is a “person” within the meaning of Tenn. Code Ann. § 47-18-103(2).

10 1636. Defendant’s conduct complained of herein affected “trade,” “commerce” or
11 “consumer transactions” within the meaning of Tenn. Code Ann. § 47-18-103(19).

12 1637. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “[u]nfair or
13 deceptive acts or practices affecting the conduct of any trade or commerce,” including but not limited
14 to: “Representing that goods or services have ... characteristics, [or] ... benefits ... that they do not
15 have...;” “Representing that goods or services are of a particular standard, quality or grade ... if they
16 are of another;” “Advertising goods or services with intent not to sell them as advertised;” and
17 “Engaging in any other act or practice which is deceptive to the consumer or any other person.”
18 Tenn. Code Ann. § 47-18-104. In the course of Defendant’s business, Defendant willfully failed to
19 disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or
20 is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants
21 than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
22 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
23 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
24 Defendant violated the Tennessee CPA by engaging in unfair or deceptive acts, including
25 representing that the Affected Vehicles have characteristics or benefits that they did not have;
26 representing that the Affected Vehicles are of a particular standard, quality, or grade when they are
27 of another; advertising the Affected Vehicles with intent not to sell them as advertised; and engaging
28 in acts or practices that are deceptive to consumers.

1 1638. In the course of Defendant's business, Defendant willfully failed to disclose and
2 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
3 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
4 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
5 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
6 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
7 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
8 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
9 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
10 particular standard and quality when they are not; failing to reveal a material fact, the omission of
11 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
12 the consumer; making a representation of fact or statement of fact material to the transaction such
13 that a person reasonably believes the represented or suggested state of affairs to be other than it
14 actually is; and failing to reveal facts that are material to the transaction in light of representations of
15 fact made in a positive manner.

16 1639. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
17 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
18 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
19 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
20 including NOx, as described above.

21 1640. Plaintiff and Subclass members reasonably relied upon Defendant's false
22 misrepresentations. They had no way of knowing that Defendant's representations were false and
23 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
24 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
25 their own.

26 1641. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

27 1642. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
28 reasonable consumers.

1 1643. Defendant intentionally and knowingly misrepresented material facts regarding the
2 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

3 1644. Defendant knew or should have known that its conduct violated the Tennessee CPA.

4 1645. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
5 emissions systems manipulation because Defendant:

- 6 a. Possessed exclusive knowledge that it manipulated the emissions system in the
7 Affected Vehicles to turn off or limit effectiveness in normal driving
8 conditions;
- 9 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 10 c. Made incomplete representations that it manipulated the emissions system in
11 the Affected Vehicles to turn off or limit effectiveness in normal driving
12 conditions, while purposefully withholding material facts from Plaintiff and
13 the Subclass that contradicted these representations.

14 1646. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 1647. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
22 members.

23 1648. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
24 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
25 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
26 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
27 direct and natural consequence of Defendant’s misrepresentations and omissions.

1 1649. Defendant's violations present a continuing risk to Plaintiff as well as to the general
2 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

3 1650. Pursuant to Tenn. Code § 47-18-109(a), Plaintiff and the Tennessee Subclass seek
4 monetary relief against Defendant measured as actual damages in an amount to be determined at
5 trial, treble damages as a result of Defendant's willful or knowing violations, and any other just and
6 proper relief available under the Tennessee CPA.

7 **COUNT II**

8 **FRAUDULENT CONCEALMENT**
9 **(BASED ON TENNESSEE LAW)**

10 1651. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

11 1652. This claim is brought on behalf of the Tennessee Subclass against FCA.

12 1653. Defendant intentionally concealed that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
14 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
15 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
16 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
17 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
18 and denied Plaintiff and the other Subclass members information that is highly relevant to their
19 purchasing decision.

20 1654. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
21 advertising and other forms of communication, including standard and uniform material provided
22 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
23 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
24 properly when driven in normal usage.

25 1655. Defendant knew these representations were false when made.

26 1656. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
27 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
28 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's

1 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
2 Affected Vehicles turns off or is limited during normal driving conditions.

3 1657. Defendant had a duty to disclose that the NOx reduction system in the Affected
4 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
5 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
6 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
7 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
8 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
9 emission vehicles, efficient, and free from defects.

10 1658. As alleged in this Complaint, at all relevant times, Defendant has held out the
11 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
12 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
13 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
14 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
15 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
16 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
17 making other disclosures about the emission system deceptive.

18 1659. The truth about the defective emissions controls and Defendant’s manipulations of
19 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
20 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
21 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
22 members.

23 1660. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
24 had no way of knowing that Defendant’s representations were false and/or misleading. As
25 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
26 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
27 true facts about the Affected Vehicles’ emissions.

1 1661. Defendant also concealed and suppressed material facts concerning what is evidently
2 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
3 compliance with federal and state clean air laws and emissions regulations that are meant to protect
4 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
5 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
6 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
7 environment. And yet, that is precisely what the Affected Vehicles are doing.

8 1662. Defendant’s false representations were material to consumers because they concerned
9 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
10 state laws and regulations regarding clean air and emissions, and also because the representations
11 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
12 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
13 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

14 1663. Defendant had a duty to disclose the emissions defect, defective design of emissions
15 controls, and violations with respect to the Affected Vehicles because details of the true facts were
16 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
17 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
18 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
19 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
20 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
21 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
22 forth above regarding the actual emissions of the vehicles, Defendant’s actual philosophy with
23 respect to compliance with federal and state clean air laws and emissions regulations, and
24 Defendant’s actual practices with respect to the vehicles at issue. Having volunteered to provide
25 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
26 truth, but the entire truth. These omitted and concealed facts were material because they directly
27 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
28 Whether a manufacturer’s products pollute, comply with federal and state clean air laws and

1 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
2 or non-compliance, are material concerns to a consumer, including with respect to the emissions
3 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
4 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
5 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

6 1664. Defendant actively concealed and/or suppressed these material facts, in whole or in
7 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
8 vehicles and did not or could not comply with federal and state laws governing clean air and
9 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
10 at the expense of Plaintiff and Subclass members.

11 1665. Defendant still has not made full and adequate disclosures, and continues to defraud
12 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
13 of the Affected Vehicles.

14 1666. Plaintiff and Subclass members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
17 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
18 vehicles, or would have taken other affirmative steps in light of the information concealed from
19 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
20 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
21 members.

22 1667. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
23 members have sustained damage because they own vehicles that are diminished in value as a result
24 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
25 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
26 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
27 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
28 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and

1 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
2 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
3 or would not have purchased or leased them at all.

4 1668. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
5 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
6 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
7 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
8 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
9 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
10 vehicles.

11 1669. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
12 amount to be proven at trial.

13 1670. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
14 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
15 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
16 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
17 future, which amount is to be determined according to proof.

18 **OO. Claims Brought on Behalf of the Texas Subclass**

19 **COUNT I**

20 **VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT**
21 **(TEX. BUS. & COM. CODE § 17.41 ET SEQ.)**

22 1671. The Texas Deceptive Trade Practices Act ("Texas DTPA") declares "[f]alse,
23 misleading, or deceptive acts" to be unlawful Tex. Bus. & Com. Code § 17.46.

24 1672. This claim is brought on behalf of the Texas Subclass against FCA.

25 1673. Plaintiff will make a demand in satisfaction of Tex. Bus. & Com. Code § 17.505(a),
26 and may amend this Complaint to assert claims under the Texas DTPA once the required notice
27 period has elapsed. This paragraph is included for purposes of notice only and is not intended to
28 actually assert a claim under the Texas DTPA.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON TEXAS LAW)**

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1674. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1675. This claim is brought on behalf of the Texas Subclass against FCA.

1676. Defendant 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 Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1677. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was 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.

1678. Defendant knew these representations were false when made.

1679. The Affected Vehicles purchased or leased by Plaintiff 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 Defendant's 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.

1680. Defendant 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 the Affected Vehicles were

1 defective, did not meet and maintain the advertised MPG rate, employed a “defeat device,” emitted
2 pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded
3 those expected by a reasonable consumer, were non-EPA-compliant and unreliable, and failed to
4 meet and maintain the advertised MPG rate, because Plaintiff and the other Subclass members relied
5 on Defendant’s material representations that the Affected Vehicles they were purchasing were
6 reduced-emission vehicles, efficient, and free from defects.

7 1681. As alleged in this Complaint, at all relevant times, Defendant has held out the
8 Affected Vehicles to be reduced emission, EPA-compliant vehicles. Defendant disclosed certain
9 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
10 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
11 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed
12 a “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer,
13 emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions
14 requirements, making other disclosures about the emission system deceptive.

15 1682. The truth about the defective emissions controls and Defendant’s manipulations of
16 those controls, unlawfully high emissions, the “defeat device,” failure to meet and maintain the
17 advertised MPG rate, and non-compliance with EPA emissions requirements was known only to
18 Defendant; Plaintiff and the Subclass members did not know of these facts and Defendant actively
19 concealed these facts from Plaintiff and Subclass members.

20 1683. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
21 had no way of knowing that Defendant’s representations were false and/or misleading. As
22 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
23 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
24 true facts about the Affected Vehicles’ emissions.

25 1684. Defendant also concealed and suppressed material facts concerning what is evidently
26 the true culture of Defendant—one characterized by an emphasis on profits and sales above
27 compliance with federal and state clean air laws and emissions regulations that are meant to protect
28 the public and consumers. They also emphasized profits and sales above the trust that Plaintiff and

1 Subclass members placed in its representations. Consumers buy diesel cars from Defendant because
2 they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
3 environment. And yet, that is precisely what the Affected Vehicles are doing.

4 1685. Defendant's false representations were material to consumers because they concerned
5 the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with
6 applicable federal and state laws and regulations regarding clean air and emissions, and also because
7 the representations played a significant role in the value of the vehicles. As Defendant well knew, its
8 customers, including Plaintiff and Subclass members, highly valued that the vehicles they were
9 purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid
10 accordingly.

11 1686. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the Affected Vehicles with respect to emissions,
17 starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in
18 each state, which were misleading, deceptive, and incomplete without the disclosure of the additional
19 facts set forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy
20 with respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, meets and maintains the advertised MPG rate, and whether that manufacturer
27 tells the truth with respect to such compliance or non-compliance, are material concerns to a
28 consumer, including with respect to the emissions certifications testing their vehicles must pass.

1 Defendant represented to Plaintiff and Subclass members that they were purchasing or leasing fuel-
2 efficient, reduced-emissions diesel vehicles when, in fact, they were purchasing or leasing defective,
3 high-emission vehicles with unlawfully high emissions.

4 1687. Defendant actively concealed and/or suppressed these material facts, in whole or in
5 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
6 vehicles and did not or could not comply with federal and state laws governing clean air and
7 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
8 at the expense of Plaintiff and Subclass members.

9 1688. Defendant had still not made full and adequate disclosures, and continues to defraud
10 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
11 of the Affected Vehicles.

12 1689. Plaintiff and Subclass members were unaware of the omitted material facts referenced
13 herein, and they would not have acted as they did if they had known of the concealed and/or
14 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
15 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
16 vehicles, or would have taken other affirmative steps in light of the information concealed from
17 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
18 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
19 members.

20 1690. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
21 members have sustained damage because they own vehicles that are diminished in value as a result
22 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and fuel
23 efficiency and Defendant's failure to timely disclose the defect or defective design of the EcoDiesel
24 engine, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues
25 engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of
26 the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth
27 and compliance with applicable federal and state laws and regulations, and its failure to meet and
28 maintain the advertised MPG rate, Plaintiff and Subclass members who purchased or leased new or

1 certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or
2 leased them at all.

3 1691. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
4 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
5 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
6 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
7 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
8 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
9 vehicles.

10 1692. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
11 amount to be proven at trial.

12 1693. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
13 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
14 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
15 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
16 future, which amount is to be determined according to proof.

17 **PP. Claims Brought on Behalf of the Utah Subclass**

18 **COUNT I**

19 **VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT**
20 **(UTAH CODE ANN. § 13-11-1 ET SEQ.)**

21 1694. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

22 1695. Plaintiff brings this Count on behalf of the Utah Subclass against FCA.

23 1696. Defendant qualifies as a "supplier" under the Utah Consumer Sales Practices Act
24 ("Utah CSPA"), Utah Code Ann. § 13-11-3.

25 1697. Plaintiff and the Subclass members are "persons" under Utah Code Ann. § 13-11-3.

26 1698. Sales of the Affected Vehicles to Plaintiff and the Subclass were "consumer
27 transactions" within the meaning of Utah Code Ann. § 13-11-3.
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1 1699. The Utah CSPA makes unlawful any “deceptive act or practice by a supplier in
2 connection with a consumer transaction” under Utah Code Ann. § 13-11-4. Specifically, “a supplier
3 commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the
4 subject of a consumer transaction has sponsorship, approval, performance characteristics,
5 accessories, uses, or benefits, if it has not” or “(b) indicates that the subject of a consumer transaction
6 is of a particular standard, quality, grade, style, or model, if it is not.” Utah Code Ann. § 13-11-4.
7 “An unconscionable act or practice by a supplier in connection with a consumer transaction” also
8 violates the Utah CSPA. Utah Code Ann. § 13-11-5.

9 1700. In the course of Defendant’s business, Defendant willfully failed to disclose and
10 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
11 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
12 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
13 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
14 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
15 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
16 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
17 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
18 particular standard and quality when they are not; failing to reveal a material fact, the omission of
19 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
20 the consumer; making a representation of fact or statement of fact material to the transaction such
21 that a person reasonably believes the represented or suggested state of affairs to be other than it
22 actually is; and failing to reveal facts that are material to the transaction in light of representations of
23 fact made in a positive manner.

24 1701. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
25 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
26 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
27 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
28 including NOx, as described above.

1 1702. Plaintiff and Subclass members reasonably relied upon Defendant’s false
2 misrepresentations. They had no way of knowing that Defendant’s representations were false and
3 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
4 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
5 their own.

6 1703. Defendant’s actions as set forth above occurred in the conduct of trade or commerce.

7 1704. Defendant’s unfair or deceptive acts or practices were likely to and did in fact deceive
8 reasonable consumers.

9 1705. Defendant intentionally and knowingly misrepresented material facts regarding the
10 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

11 1706. Defendant knew or should have known that its conduct violated the Utah CSPA.

12 1707. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
13 emissions systems manipulation because Defendant:

- 14 a. Possessed exclusive knowledge that it manipulated the emissions system in the
15 Affected Vehicles to turn off or limit effectiveness in normal driving
16 conditions;
- 17 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
18 c. Made incomplete representations that it manipulated the emissions system in
19 the Affected Vehicles to turn off or limit effectiveness in normal driving
20 conditions, while purposefully withholding material facts from Plaintiff and
21 the Subclass that contradicted these representations.

22 1708. Defendant had a duty to disclose that the NOx reduction system in the Affected
23 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
24 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
25 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
26 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
27 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
28 emission vehicles, efficient, and free from defects.

1 1709. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
2 members.

3 1710. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
4 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
5 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
6 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
7 direct and natural consequence of Defendant's misrepresentations and omissions.

8 1711. Defendant's violations present a continuing risk to Plaintiff as well as to the general
9 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

10 1712. Pursuant to Utah Code Ann. § 13-11-4, Plaintiff and the Subclass seek monetary relief
11 against Defendant measured as the greater of (a) actual damages in an amount to be determined at
12 trial and (b) statutory damages in the amount of \$2,000 for Plaintiff and each Utah Subclass member,
13 reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

14 **COUNT II**

15 **FRAUDULENT CONCEALMENT**
16 **(BASED ON UTAH LAW)**

17 1713. Plaintiff incorporates by reference all preceding allegations as though fully set forth
18 herein.

19 1714. Plaintiff brings this Count on behalf of the Utah Subclass against FCA.

20 1715. Defendant intentionally concealed that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
22 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
23 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
24 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
25 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
26 and denied Plaintiff and the other Subclass members information that is highly relevant to their
27 purchasing decision.

1 1716. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 1717. Defendant knew these representations were false when made.

7 1718. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
8 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
9 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
10 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions.

12 1719. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 1720. As alleged in this Complaint, at all relevant times, Defendant has held out the
20 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
21 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
22 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
23 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
24 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
25 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
26 making other disclosures about the emission system deceptive.

27 1721. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1722. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1723. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1724. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1725. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1726. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1727. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1728. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1729. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1730. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1731. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1732. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

1 **QQ. Claims Brought on Behalf of the Vermont Subclass**

2 **COUNT I**

3 **VIOLATION OF VERMONT CONSUMER FRAUD ACT**
4 **(VT. STAT. ANN. TIT. 9, § 2451 ET SEQ.)**

5 1733. Plaintiff incorporates by reference all preceding allegations as though fully set forth
6 herein.

7 1734. This claim is brought on behalf of the Vermont Subclass against FCA.

8 1735. Defendant is a seller within the meaning of Vt. Stat. Ann. tit. 9, § 2451(a)(c).

9 1736. The Vermont Consumer Fraud Act (“Vermont CFA”) makes unlawful “[u]nfair
10 methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” Vt.
11 Stat. Ann. tit. 9, § 2453(a).

12 1737. In the course of Defendant’s business, Defendant willfully failed to disclose and
13 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
14 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
15 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
16 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
17 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
18 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
19 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
20 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
21 particular standard and quality when they are not; failing to reveal a material fact, the omission of
22 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
23 the consumer; making a representation of fact or statement of fact material to the transaction such
24 that a person reasonably believes the represented or suggested state of affairs to be other than it
25 actually is; and failing to reveal facts that are material to the transaction in light of representations of
26 fact made in a positive manner.

27 1738. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
28 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the

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

4 1739. Plaintiff and Subclass members reasonably relied upon Defendant's false
5 misrepresentations. They had no way of knowing that Defendant's representations were false and
6 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
7 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
8 their own.

9 1740. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

10 1741. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
11 reasonable consumers.

12 1742. Defendant intentionally and knowingly misrepresented material facts regarding the
13 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

14 1743. Defendant knew or should have known that its conduct violated the Vermont CFA.

15 1744. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
16 emissions systems manipulation because Defendant:

- 17 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 18 Affected Vehicles to turn off or limit effectiveness in normal driving
- 19 conditions;
- 20 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 21 c. Made incomplete representations that it manipulated the emissions system in
- 22 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 23 conditions, while purposefully withholding material facts from Plaintiff and
- 24 the Subclass that contradicted these representations.

25 1745. Defendant had a duty to disclose that the NOx reduction system in the Affected
26 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
27 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
28 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and

1 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
2 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
3 emission vehicles, efficient, and free from defects.

4 1746. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
5 members.

6 1747. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
7 reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the EcoDiesel
8 engine, the quality of Defendant's brands, the devaluing of environmental cleanliness and integrity at
9 Defendant's company, and the true value of the Affected Vehicles.

10 1748. Defendant intentionally and knowingly misrepresented material facts regarding the
11 Affected Vehicles with intent to mislead Plaintiff and the Vermont Subclass. Defendant's fraudulent
12 use of the "defeat device" and concealment of the true characteristics of the Clean Diesel engine
13 system were material to Plaintiff and the Vermont Subclass. A vehicle made by a reputable
14 manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable
15 vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the
16 amount its vehicles pollute rather than make environmentally friendly vehicles.

17 1749. Plaintiff and the Vermont Subclass suffered ascertainable loss caused by Defendant's
18 misrepresentations and concealment of and failure to disclose material information. Plaintiff who
19 purchased the Affected Vehicles either would have paid less for their vehicles or would not have
20 purchased or leased them at all.

21 1750. Defendant had an ongoing duty to all its customers to refrain from unfair and
22 deceptive acts or practices under the Vermont CFA. All owners of Affected Vehicles suffered
23 ascertainable loss in the form of the diminished value of their vehicles as a result of Defendant's
24 deceptive and unfair acts and practices that occurred In the course of Defendant's business.

25 1751. Defendant's violations present a continuing risk to Plaintiff as well as to the general
26 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

27 1447. As a direct and proximate result of Defendant's violations of the Vermont CFA,
28 Plaintiff and the Vermont Subclass have suffered injury in fact and/or actual damage.

1 1448. Plaintiff and Vermont Subclass members are entitled to recover “appropriate equitable
2 relief” and “the amount of [their] damages, or the consideration or the value of the consideration
3 given by [them], reasonable attorney’s fees, and exemplary damages not exceeding three times the
4 value of the consideration given by [them]” pursuant to Vt. Stat. Ann. tit. 9, § 2461(b).

5 **COUNT II**

6 **FRAUDULENT CONCEALMENT**
7 **(BASED ON VERMONT LAW)**

8 1752. Plaintiff incorporates by reference all preceding allegations as though fully set forth
9 herein.

10 1753. Plaintiff brings this Count on behalf of the Vermont Subclass against FCA.

11 1754. Defendant intentionally concealed that the NOx reduction system in the Affected
12 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
13 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
14 emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s
15 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
16 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
17 and denied Plaintiff and the other Subclass members information that is highly relevant to their
18 purchasing decision.

19 1755. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
20 advertising and other forms of communication, including standard and uniform material provided
21 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
22 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
23 properly when driven in normal usage.

24 1756. Defendant knew these representations were false when made.

25 1757. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
26 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
27 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant’s
28

1 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
2 Affected Vehicles turns off or is limited during normal driving conditions.

3 1758. Defendant had a duty to disclose that the NOx reduction system in the Affected
4 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
5 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
6 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
7 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
8 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
9 emission vehicles, efficient, and free from defects.

10 1759. As alleged in this Complaint, at all relevant times, Defendant has held out the
11 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
12 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
13 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
14 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
15 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
16 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
17 making other disclosures about the emission system deceptive.

18 1760. The truth about the defective emissions controls and Defendant’s manipulations of
19 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
20 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
21 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
22 members.

23 1761. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
24 had no way of knowing that Defendant’s representations were false and/or misleading. As
25 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
26 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
27 true facts about the Affected Vehicles’ emissions.

1 1762. Defendant also concealed and suppressed material facts concerning what is evidently
2 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
3 compliance with federal and state clean air laws and emissions regulations that are meant to protect
4 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
5 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
6 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
7 environment. And yet, that is precisely what the Affected Vehicles are doing.

8 1763. Defendant’s false representations were material to consumers because they concerned
9 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
10 state laws and regulations regarding clean air and emissions, and also because the representations
11 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
12 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
13 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

14 1764. Defendant had a duty to disclose the emissions defect, defective design of emissions
15 controls, and violations with respect to the Affected Vehicles because details of the true facts were
16 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
17 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
18 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
19 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
20 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
21 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
22 forth above regarding the actual emissions of the vehicles, Defendant’s actual philosophy with
23 respect to compliance with federal and state clean air laws and emissions regulations, and
24 Defendant’s actual practices with respect to the vehicles at issue. Having volunteered to provide
25 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
26 truth, but the entire truth. These omitted and concealed facts were material because they directly
27 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
28 Whether a manufacturer’s products pollute, comply with federal and state clean air laws and

1 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
2 or non-compliance, are material concerns to a consumer, including with respect to the emissions
3 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
4 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
5 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

6 1765. Defendant actively concealed and/or suppressed these material facts, in whole or in
7 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
8 vehicles and did not or could not comply with federal and state laws governing clean air and
9 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
10 at the expense of Plaintiff and Subclass members.

11 1766. Defendant still has not made full and adequate disclosures, and continues to defraud
12 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
13 of the Affected Vehicles.

14 1767. Plaintiff and Subclass members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
17 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
18 vehicles, or would have taken other affirmative steps in light of the information concealed from
19 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
20 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
21 members.

22 1768. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
23 members have sustained damage because they own vehicles that are diminished in value as a result
24 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
25 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
26 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
27 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
28 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and

1 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
2 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
3 or would not have purchased or leased them at all.

4 1769. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
5 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
6 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
7 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
8 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
9 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
10 vehicles.

11 1770. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
12 amount to be proven at trial.

13 1771. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
14 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
15 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
16 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
17 future, which amount is to be determined according to proof.

18 **RR. Claims Brought on Behalf of the Virginia Subclass**

19 **COUNT I**

20 **VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT**
21 **(VA. CODE ANN. § 59.1-196 ET SEQ.)**

22 1772. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

23 1773. This claim is brought on behalf of the Virginia Subclass against FCA.

24 1774. Defendant is a "person" as defined by Va. Code Ann. § 59.1-198. The transactions
25 between Plaintiff and the other Subclass members on the one hand and Defendant on the other,
26 leading to the purchase or lease of the Affected Vehicles by Plaintiff and the other Subclass
27 members, are "consumer transactions" as defined by Va. Code Ann. § 59.1-198, because the
28 Affected Vehicles were purchased or leased primarily for personal, family or household purposes.

1 1775. The Virginia Consumer Protection Act (“Virginia CPA”) prohibits “(5)
2 misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
3 benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade, style,
4 or model; ... (8) advertising goods or services with intent not to sell them as advertised; ... [and]
5 (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in
6 connection with a consumer transaction[.]” Va. Code Ann. § 59.1-200(A).

7 1776. In the course of Defendant’s business, Defendant willfully failed to disclose and
8 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
9 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
10 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
11 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
12 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
13 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
14 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
15 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
16 particular standard and quality when they are not; failing to reveal a material fact, the omission of
17 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
18 the consumer; making a representation of fact or statement of fact material to the transaction such
19 that a person reasonably believes the represented or suggested state of affairs to be other than it
20 actually is; and failing to reveal facts that are material to the transaction in light of representations of
21 fact made in a positive manner.

22 1777. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
23 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
24 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
25 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
26 including NOx, as described above.

27 1778. Plaintiff and Subclass members reasonably relied upon Defendant’s false
28 misrepresentations. They had no way of knowing that Defendant’s representations were false and

1 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
2 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
3 their own.

4 1779. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

5 1780. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
6 reasonable consumers.

7 1781. Defendant intentionally and knowingly misrepresented material facts regarding the
8 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

9 1782. Defendant knew or should have known that its conduct violated the Virginia CPA.

10 1783. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
11 emissions systems manipulation because Defendant:

- 12 a. Possessed exclusive knowledge that it manipulated the emissions system in the
13 Affected Vehicles to turn off or limit effectiveness in normal driving
14 conditions;
- 15 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 16 c. Made incomplete representations that it manipulated the emissions system in
17 the Affected Vehicles to turn off or limit effectiveness in normal driving
18 conditions, while purposefully withholding material facts from Plaintiff and
19 the Subclass that contradicted these representations.

20 1784. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 1785. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
28 members.

1 1786. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
2 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
3 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
4 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
5 direct and natural consequence of Defendant's misrepresentations and omissions.

6 1787. Defendant's violations present a continuing risk to Plaintiff as well as to the general
7 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

8 1788. Pursuant to Va. Code Ann. § 59.1-204, Plaintiff and the Subclass seek monetary relief
9 against Defendant measured as the greater of (a) actual damages in an amount to be determined at
10 trial and (b) statutory damages in the amount of \$500 for Plaintiff and each Subclass member.
11 Because Defendant's conduct was committed willfully and knowingly, Plaintiff is entitled to recover,
12 for himself and each Subclass member, the greater of (a) three times actual damages or (b) \$1,000.

13 1789. Plaintiff also seeks punitive damages, and attorneys' fees, and any other just and
14 proper relief available under General Business Law § 59.1-204 *et seq.*

15 **COUNT II**

16 **FRAUDULENT CONCEALMENT**
17 **(BASED ON VIRGINIA LAW)**

18 1790. Plaintiff incorporates by reference all preceding allegations as though fully set forth
19 herein.

20 1791. Plaintiff brings this Count on behalf of the Virginia Subclass against FCA.

21 1792. Defendant intentionally concealed that the NOx reduction system in the Affected
22 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
23 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
24 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
25 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
26 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
27 and denied Plaintiff and the other Subclass members information that is highly relevant to their
28 purchasing decision.

1 1793. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 1794. Defendant knew these representations were false when made.

7 1795. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
8 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
9 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
10 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions.

12 1796. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 1797. As alleged in this Complaint, at all relevant times, Defendant has held out the
20 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
21 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
22 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
23 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
24 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
25 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
26 making other disclosures about the emission system deceptive.

27 1798. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1799. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1800. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1801. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1802. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1803. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1804. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1805. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1806. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1807. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1808. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1809. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

1 **SS. Claims Brought on Behalf of the Washington Subclass**

2 **COUNT I**

3 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**
4 **(WASH. REV. CODE ANN. § 19.86.010 ET SEQ.)**

5 1810. Plaintiff incorporates by reference all preceding allegations as though fully set forth
6 herein.

7 1811. Plaintiff brings this Count on behalf of the Washington Subclass against FCA.

8 1812. Defendant, Plaintiff, and each member of the Washington Subclass is a “person”
9 under Wash. Rev. Code Ann. § 19.86.010(1) (“Washington CPA”).

10 1813. Defendant engaged in “trade” or “commerce” under Wash. Rev. Code Ann. §
11 19.86.010(2).

12 1814. The Washington Consumer Protection Act (“Washington CPA”) broadly prohibits
13 “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade
14 or commerce.” Wash. Rev. Code. Wash. Ann. § 19.96.010.

15 1815. In the course of Defendant’s business, Defendant willfully failed to disclose and
16 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
17 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
18 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
19 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
20 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
21 Defendant engaged in unfair and deceptive business practices prohibited by the Washington CPA.
22 Defendant’s conduct was unfair because it (1) offends public policy as it has been established by
23 statutes, the common law, or otherwise; (2) is immoral, unethical, oppressive, or unscrupulous; or (3)
24 causes substantial injury to consumers. Defendant’s conduct is deceptive because it has the capacity
25 or tendency to deceive.

26 1816. In the course of Defendant’s business, Defendant willfully failed to disclose and
27 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
28 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than

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

13 1817. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
14 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
15 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
16 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
17 including NOx, as described above.

18 1818. Plaintiff and Subclass members reasonably relied upon Defendant's false
19 misrepresentations. They had no way of knowing that Defendant's representations were false and
20 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
21 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
22 their own.

23 1819. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

24 1820. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
25 reasonable consumers.

26 1821. Defendant intentionally and knowingly misrepresented material facts regarding the
27 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

28 1822. Defendant knew or should have known that its conduct violated the Washington CPA.

1 1823. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
2 emissions systems manipulation because Defendant:

- 3 a. Possessed exclusive knowledge that it manipulated the emissions system in the
4 Affected Vehicles to turn off or limit effectiveness in normal driving
5 conditions;
- 6 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
7 c. Made incomplete representations that it manipulated the emissions system in
8 the Affected Vehicles to turn off or limit effectiveness in normal driving
9 conditions, while purposefully withholding material facts from Plaintiff and
10 the Subclass that contradicted these representations.

11 1824. Defendant had a duty to disclose that the NOx reduction system in the Affected
12 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
13 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
14 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
15 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
16 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
17 emission vehicles, efficient, and free from defects.

18 1825. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
19 members.

20 1826. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
21 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
22 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
23 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
24 direct and natural consequence of Defendant’s misrepresentations and omissions.

25 1827. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
26 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1 1828. Defendant is liable to Plaintiff and the Subclass for damages in amounts to be proven
2 at trial, including attorneys' fees, costs, and treble damages, as well as any other remedies the Court
3 may deem appropriate under Wash. Rev. Code. Ann. § 19.86.090.

4 **COUNT II**

5 **FRAUDULENT CONCEALMENT**
6 **(BASED ON WASHINGTON LAW)**

7 1829. Plaintiff incorporates by reference all preceding allegations as though fully set forth
8 herein.

9 1830. Plaintiff brings this Count on behalf of the Washington Subclass against FCA.

10 1831. Defendant intentionally concealed that the NOx reduction system in the Affected
11 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
12 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
13 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
14 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
15 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
16 and denied Plaintiff and the other Subclass members information that is highly relevant to their
17 purchasing decision.

18 1832. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
19 advertising and other forms of communication, including standard and uniform material provided
20 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
21 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
22 properly when driven in normal usage.

23 1833. Defendant knew these representations were false when made.

24 1834. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
25 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
26 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
27 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
28 Affected Vehicles turns off or is limited during normal driving conditions.

1 1835. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 1836. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 1837. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 1838. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 1839. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 1840. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 1841. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
17 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

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

3 1842. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
5 vehicles and did not or could not comply with federal and state laws governing clean air and
6 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
7 at the expense of Plaintiff and Subclass members.

8 1843. Defendant still has not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 1844. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 1845. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
24 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

1 1846. The value of Plaintiff’s and Subclass members’ vehicles has diminished as a result of
2 Defendant’s fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
3 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
4 requirements, all of which has greatly tarnished Defendant’s brand name, which is attached to
5 Plaintiff’s and Subclass members’ vehicles, and made any reasonable consumer reluctant to purchase
6 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
7 vehicles.

8 1847. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
9 amount to be proven at trial.

10 1848. Defendant’s acts were done wantonly, maliciously, oppressively, deliberately, with
11 intent to defraud, and in reckless disregard of Plaintiff’s and Subclass members’ rights and the
12 representations that Defendant made to them, in order to enrich Defendant. Defendant’s conduct
13 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
14 future, which amount is to be determined according to proof.

15 **TT. Claims Brought on Behalf of the West Virginia Subclass**

16 **COUNT I**

17 **VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT**
18 **AND PROTECTION ACT**
(W. VA. CODE § 46A-1-101 ET SEQ.)

19 1849. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

20 1850. Plaintiff brings this Count on behalf of the West Virginia Subclass against FCA.

21 1851. Plaintiff intends to assert a claim under the West Virginia Consumer Credit and
22 Protection Act (“West Virginia CCPA”) which prohibits “unfair or deceptive acts or practices in the
23 conduct of any trade or commerce” W. VA. CODE § 46A-6-104. Plaintiff will make a demand in
24 satisfaction of W. VA. CODE § 46A-6-106(b), and may amend this Complaint to assert claims under
25 the CCPA once the required 20 days have elapsed. This paragraph is included for purposes of notice
26 only and is not intended to actually assert a claim under the CCPA.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON WEST VIRGINIA LAW)**

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1852. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1853. Plaintiff brings this Count on behalf of the West Virginia Subclass against FCA.

1854. Defendant 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 Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1855. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was 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.

1856. Defendant knew these representations were false when made.

1857. The Affected Vehicles purchased or leased by Plaintiff 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 Defendant's 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.

1858. Defendant 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 the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1859. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 1860. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 1861. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 1862. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
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1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 1863. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1864. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1865. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1866. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1867. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1868. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1869. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
5 vehicles.

6 1870. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
7 amount to be proven at trial.

8 1871. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
12 future, which amount is to be determined according to proof.

13 **UU. Claims Brought on Behalf of the Wisconsin Subclass**

14 **COUNT I**

15 **VIOLATIONS OF THE WISCONSIN**
16 **DECEPTIVE TRADE PRACTICES ACT**
(WIS. STAT. § 110.18)

17 1872. Plaintiff incorporates by reference all preceding allegations as though fully set forth
18 herein.

19 1873. Plaintiff brings this claim on behalf of the Wisconsin Subclass against FCA.

20 1874. Defendant is a "person, firm, corporation or association" within the meaning of Wis.
21 Stat. § 100.18(1).

22 1875. Plaintiff and Wisconsin Subclass members are members of "the public" within the
23 meaning of Wis. Stat. § 100.18(1). Plaintiff and Wisconsin Subclass members purchased or leased
24 one or more Affected Vehicles.

25 1876. The Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA") prohibits a
26 "representation or statement of fact which is untrue, deceptive or misleading." Wis. Stat.
27 § 100.18(1). In the course of Defendant's business, Defendant willfully failed to disclose and
28 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited

1 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
2 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
3 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
4 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
5 Defendant engaged in deceptive business practices prohibited by the Wisconsin DTPA.

6 1877. In the course of Defendant's business, Defendant willfully failed to disclose and
7 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
8 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
9 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
10 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
11 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
12 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
13 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
14 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
15 particular standard and quality when they are not; failing to reveal a material fact, the omission of
16 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
17 the consumer; making a representation of fact or statement of fact material to the transaction such
18 that a person reasonably believes the represented or suggested state of affairs to be other than it
19 actually is; and failing to reveal facts that are material to the transaction in light of representations of
20 fact made in a positive manner.

21 1878. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above.

26 1879. Plaintiff and Subclass members reasonably relied upon Defendant's false
27 misrepresentations. They had no way of knowing that Defendant's representations were false and
28 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 1880. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 1881. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 1882. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 1883. Defendant knew or should have known that its conduct violated the Wisconsin DTPA.

9 1884. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 1885. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 1886. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1 1887. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
2 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
3 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
4 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
5 direct and natural consequence of Defendant's misrepresentations and omissions.

6 1888. Defendant's violations present a continuing risk to Plaintiff as well as to the general
7 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

8 1889. Plaintiff and Wisconsin Subclass members are entitled to damages and other relief
9 provided for under Wis. Stat. § 100.18(11)(b)(2). Because Defendant's conduct was committed
10 knowingly and/or intentionally, Plaintiff and Wisconsin Subclass members are entitled to treble
11 damages.

12 1890. Plaintiff and Wisconsin Subclass members also seek court costs and attorneys' fees
13 under Wis. Stat. § 110.18(11)(b)(2).

14 **COUNT II**

15 **FRAUDULENT CONCEALMENT**
16 **(BASED ON WISCONSIN LAW)**

17 1891. Plaintiff incorporates by reference all preceding allegations as though fully set forth
18 herein.

19 1892. Plaintiff brings this Count on behalf of the Wisconsin Subclass against FCA.

20 1893. Defendant intentionally concealed that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
22 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
23 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
24 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
25 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
26 and denied Plaintiff and the other Subclass members information that is highly relevant to their
27 purchasing decision.

1 1894. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 1895. Defendant knew these representations were false when made.

7 1896. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
8 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
9 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
10 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions.

12 1897. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 1898. As alleged in this Complaint, at all relevant times, Defendant has held out the
20 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
21 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
22 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
23 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
24 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
25 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
26 making other disclosures about the emission system deceptive.

27 1899. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1900. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1901. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1902. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1903. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1904. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1905. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1906. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1907. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1908. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1909. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1910. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of members of the Nationwide RICO Class, California Class, and Multistate Class, respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendants, as follows:

- A. Certification of the proposed Nationwide RICO Class, California Class, and Multistate Class, including appointment of Plaintiff's counsel as Class Counsel;
- B. An order temporarily and permanently enjoining FCA and Bosch from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- C. Injunctive relief in the form of a recall or free replacement program;
- D. 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;
- E. 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;
- F. An order requiring FCA and Bosch to pay both pre- and post-judgment interest on any amounts awarded;
- G. An award of costs and attorneys' fees; and
- H. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

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

DATED: December 1, 2016

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Attorneys for Plaintiff and the Proposed Classes

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
JOSE CHAVEZ
(b) County of Residence of First Listed Plaintiff: Contra Costa County
(c) Attorneys: Shana E. Scarlett, Hagens Berman Sobol Shapiro, LLP, 715 Hearst Avenue, Suite 202, Berkeley, CA 94710; (510) 725-3000

DEFENDANTS
FCA US LLC, ROBERT BOSCH GMBH, and ROBERT BOSCH LLC
County of Residence of First Listed Defendant:
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Table with columns: CITIZENSHIP, PTF, DEF, PTF, DEF. Includes categories like Citizen of This State, Citizen of Another State, Foreign Nation, etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Grid with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d), 18 U.S.C. § 1962
Brief description of cause: Fraudulent concealment of motor vehicle emissions defeat device and violations of consumer protection laws

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) [X] SAN FRANCISCO/OAKLAND [] SAN JOSE [] EUREKA-MCKINLEYVILLE

DATE: 12/01/2016 SIGNATURE OF ATTORNEY OF RECORD: /s/ Shana E. Scarlett

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fiat Chrysler, Robert Bosch LLC Named in EcoDiesel Fraud Class Action](#)
