

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

MICHAEL MARKSBERRY, individually	)	
and on behalf of a class of similarly	)	
situated individuals,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
FCA US LLC	)	
f/k/a/ CHRYSLER GROUP LLC, and	)	
LANDERS MCLARTY OLATHE	)	
K.S., LLC, d/b/a OLATHE DODGE	)	
CHRYSLER JEEP RAM	)	
	)	
Defendants.	)	

**DEFENDANT FCA US LLC’S NOTICE OF REMOVAL**

Defendant FCA US LLC (“FCA US”), pursuant to 28 U.S.C. §§ 1332, 1441 1446, and 1453, and in compliance with Local Rule 81.1, hereby removes this case to this Court. As set forth below, this Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).

**I. BACKGROUND**

**A. The Petitions/Complaints Filed In State Court.**

1. On November 16, 2018, Plaintiff Michael Marksberry filed a Petition for Damages in the District Court of Johnson County, Kansas Civil Division, in the State of Kansas against FCA US and Landers McLarty Olathe KS, LLC, d/b/a Olathe Dodge Chrysler Jeep Ram (“Olathe Dodge”), known and numbered as *Marksberry v. FCA US LLC et. al.*, Case No. 18CV06439 (“State Court Action”). FCA US was served with process in the State Court Action on November 27, 2018. A copy of the Petition is attached hereto as Exhibit 1.

2. On November 22, 2019, pursuant to an order of the state court granting leave, Plaintiff filed an Amended Petition for Damages which was served on FCA US on that same date. A copy of the Amended Petition is attached hereto as Exhibit 2. In the Amended Petition, Plaintiff added, for the first time, “Class Action Allegations” seeking to represent a nationwide class defined as follows:

“All persons who purchased a vehicle from Defendant FCA US LLC and were provided a Lifetime Powertrain Limited Warranty on or after October 31, 2009.”

*Id.*, ¶ 43.

**B. Allegations About Plaintiff And The Claims Pleaded In The Amended Petition.**

3. Plaintiff purchased a model-year 2009 Dodge Ram 1500 on October 31, 2009 from Olathe Dodge which came with a Lifetime Powertrain Limited Warranty (“Powertrain Warranty”) promising to cover the cost of parts and labor associated with the repair of specifically listed powertrain components. *See* Amended Petition, ¶¶ 12-16. The express terms of the Powertrain Warranty stated that to keep it in effect a vehicle owner must have a powertrain inspection performed by an authorized FCA US dealer once every five years from the in-service date. *Id.* at ¶ 16. Plaintiff did not have the required powertrain inspection performed on his vehicle, and thus, in April 2016, he had to pay \$1,323.53 to repair a powertrain component. *Id.* at ¶¶ 22-24.

4. Plaintiff claims that FCA US is liable to him and the members of the putative class because it concealed the requirements regarding the need for an inspection to keep the Powertrain Warranty effective, and this resulted in the improper cancellation of these warranties. *See, generally*, Amended Complaint.

5. Plaintiff pleads five claims on behalf of himself and the class. *Id.* at ¶¶ 52-100. These claims are for: violations of the Kansas Consumer Protection Act (Count I); violation of

the Magnuson-Moss Warranty Act (Count II); breach of implied warranty of merchantability (Count III); fraud (Count IV); and injunctive relief (Count V).

6. For relief, Plaintiff seeks an “amount as is allowable by law and to be determined at trial”; “diminution of value of the subject vehicle”; “reasonable attorneys’ fees”; and a “permanent injunction” to compel “Chrysler to honor all Lifetime Limited Powertrain Warranties it has issued.” *See* Amended Petition (“Wherefore” Clauses).

**C. The Amount in Controversy.**

7. The value of this case well exceeds this Court’s \$5,000,000 threshold. The class encompasses approximately 26,000 vehicles (*i.e.*, vehicles sold by FCA US nationwide after October 31, 2009 that came with a Lifetime Powertrain Limited Warranty). Plaintiff seeks an unspecified amount of damages and to compel FCA US to honor a Powertrain Warranty even if it has been voided due to non-compliance with the inspection clause in it. If the value of the claims at issue were measured based only on Plaintiff’s own purported “damages” associated with having to pay for a repair that would have been covered by a still-valid Powertrain Warranty, the value of this case would exceed \$34,000,000 (26,000 vehicles x \$1,323.53 repair costs = \$34,411,780). And, if the value of this case is measured by the value a consumer receives in having a lifetime powertrain limited warranty the amount in controversy would exceed \$50,000,000 because during the time frame at issue the manufacturer’s suggested retail price for a separately purchased powertrain limited warranty ranged from \$1,940 to \$2,070 (26,000 vehicles x \$1,940 cost of warranty = \$50,440,000). And, to determine the final value of this case an amount for the claimed attorneys’ fees would have to be added.

## II. GROUNDS FOR REMOVAL

8. This Court has jurisdiction of this case under 28 U.S.C. § 1332(d)(2), commonly referred to as the Class Action Fairness Act (“CAFA”). Under CAFA, when the number of putative class members exceeds 100, this Court has original jurisdiction over “any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which ... any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2).

9. Plaintiff is a citizen of the State of Kansas, and class members reside in every state in the country. *See* Amended Petition, ¶ 8. FCA US is a citizen of the State of Delaware under whose laws it was organized and the State of Michigan where it has a principal place of business. Thus, the minimal diversity requirements of CAFA are satisfied. *See* 28 U.S.C. §§ 1332(d)(2)(A).

10. There are more than 100 members of the putative class as required by 28 U.S.C. § 1332(d)(2)(5)(b). Indeed, approximately 26,000 persons fit within the proffered class definition.

11. The amount put into controversy by Plaintiff’s claims for relief far exceeds the sum or value of \$5,000,000, exclusive of costs and interest. *See supra*.

12. Because there is minimal diversity, greater than 100 putative class members, and the matter in controversy exceeds the sum of \$5,000,000, this Court has jurisdiction under 28 U.S.C. § 1332(d)(2).

13. No statutory exception to CAFA jurisdiction applies.

## III. REMOVAL IS PROPER AND TIMELY

14. This Notice of Removal is filed within thirty days of November 22, 2019, the date on which FCA US was first served with the Amended Petition which, for the first time, pleaded

claims on behalf of a class. *See* Amended Petition, ¶¶ 42-51. Thus, this removal is timely. *See* 28 U.S.C. § 1446(b)(1).

15. The docket from the State Court Action is attached hereto as Exhibit 3, and, pursuant to 28 U.S.C. § 1446(a), a copy of all other process, pleadings, filings, and orders served on FCA US in the State Court Action are attached hereto as Exhibit 4.

16. In compliance with Local Rule 81.1(c), FCA US will promptly file a copy of this Notice of Removal with the clerk of the District Court of Johnson County in the state of Kansas, and provide written notice of the removal to all counsel of record.

17. The United States District Court for the District of Kansas embraces the county and court in which Plaintiff filed this case. 28 U.S.C. § 96. Therefore, this action is properly removed to this Court pursuant to 28 U.S.C. § 1441(a).

WHEREFORE, the above described action now pending against FCA US in the District Court of Johnson County in the State of Kansas is removed to the United States District Court for the District of Kansas.

Dated: November 25, 2019

Respectfully submitted,

By: s/ Scottie S. Kleypas  
**ROBERT A. KUMIN, P.C.**  
Craig S. Laird (KS #25266)  
[claird@kuminlaw.com](mailto:claird@kuminlaw.com)  
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[skleypas@kuminlaw.com](mailto:skleypas@kuminlaw.com)  
6901 Shawnee Mission Parkway, Suite 250  
Overland Park, Kansas 66202  
T: (913) 432-1826  
F: (913) 236-7115

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 25th day of November, 2019, a copy of the foregoing was electronically filed with the Court using CM/ECF system which will cause this document to be served on all counsel. In addition, a copy of the foregoing was sent by electronic and first class mail to:

Bryce B. Bell  
Mark W. Schmitz  
Bell Law, LLC  
2600 Grand Blvd., Suite 580  
Kansas City, MO 64108  
[Bryce@BellLawKC.com](mailto:Bryce@BellLawKC.com)  
[MS@BellLawKC.com](mailto:MS@BellLawKC.com)  
*Attorneys for Plaintiff*

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[Cory.buck@caselinden.com](mailto:Cory.buck@caselinden.com)  
*Attorneys for Olathe Dodge*

*s/ Scottie S. Kleypas*  
Scottie S. Kleypas (KS #20650)

# **Exhibit 1**

## **Original State Court Petition**



**Service of Process  
Transmittal**

11/27/2018

CT Log Number 534475730

**TO:** Melissa Graylin  
FCA US LLC  
1000 Chrysler Dr Ofc of  
Auburn Hills, MI 48326-2766

**RE: Process Served in Kansas**

**FOR:** FCA US LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Michael Marksberry, Pltf. vs. FCA US LLC, etc. and Landers McLarty Olathe KS, LLC, etc., Dfts.

**DOCUMENT(S) SERVED:** Request(s), Summons, Petition

**COURT/AGENCY:** Johnson County District Court, KS  
Case # 18CV06439

**NATURE OF ACTION:** Product Liability Litigation - Lemon Law - 2009 Dodge Ram 1500, VIN: 1D3HB13T69J514815

**ON WHOM PROCESS WAS SERVED:** The Corporation Company, Inc., Topeka, KS

**DATE AND HOUR OF SERVICE:** By Certified Mail on 11/27/2018 postmarked: "Not Post Marked"

**JURISDICTION SERVED :** Kansas

**APPEARANCE OR ANSWER DUE:** Within 21 days after service

**ATTORNEY(S) / SENDER(S):** Mark W. Schmitz  
Bell Law, LLC  
2600 Grand Blvd., Suite 580  
Kansas City, MO 64108  
816-886-8206

**ACTION ITEMS:** CT has retained the current log, Retain Date: 11/28/2018, Expected Purge Date: 12/03/2018  
  
Image SOP  
  
Email Notification, Lance Arnott SOPVerification@wolterskluwer.com

**SIGNED:** The Corporation Company, Inc.  
**ADDRESS:** 112 S.W. 7th Street  
Suite 3C  
Topeka, KS 66603  
**TELEPHONE:** 954-473-5503





**BRYCE B BELL  
LAW, LLC**  
2600 Grand Blvd., Ste. 580  
Kansas City, MO 64108

www.Bell-Law-KC.com



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05/15/2019

**To: FCA US LLC  
FKA Chrysler Group LLC  
Serve RA: The Corporation Company  
112 SW 7<sup>th</sup> Street, Suite 3C  
Topeka, KS 66603**

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT

MICHAEL MARKSBERRY

Plaintiff

vs

FCA US LLC FKA CHRYSLER GROUP LLC

Defendant

Case No: 18CV06439

Division: 7

K.S.A. Chapter 60

REQUEST AND SERVICE INSTRUCTION FORM

To: Clerk of the District Court:

Please issue a SUMMONS and PETITION in this action for FCA US LLC FKA CHRYSLER GROUP LLC whose address for service is:

SERVE RA: THE CORPORATION COMPANY 112 SW 7TH STREET, SUITE 3C  
TOPEKA, KS 66603

Certified mail service by the undersigned attorney, who understands that it is their responsibility to obtain service and to make the return to the clerk. The postal receipt for service must be filed with the Clerk's office to prove service.

By: /s/ BRYCE B BELL  
BRYCE B BELL, #20866  
2600 GRAND BLVD.,STE. 580  
KANSAS CITY, MO 64108  
816-886-8206

*Clerk of the District Court, Johnson County Kansas  
11/16/18 03:27pm HS*

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT

MICHAEL MARKSBERRY

Plaintiff

vs

FCA US LLC FKA CHRYSLER GROUP LLC  
Defendant

Case No: 18CV06439

Division: 7

K.S.A. Chapter 60

SUMMONS

To the above-named defendant:

YOU ARE HEREBY NOTIFIED that an action has been commenced against you in this court. You are required to file your answer to the petition with the court and to serve a copy upon the plaintiff's attorney, as follows:

Name: BRYCE B BELL  
Address: 2600 GRAND BLVD.,STE. 580  
KANSAS CITY, MO 64108  
Phone: (816) 886-8206

Within 21 days after service of summons upon you.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the attached petition, which is incorporated herein by reference. Any related claim which you may have against the plaintiff must be stated as a counterclaim in your answer, or you will thereafter be barred from making such claim in any other action.



/s/ Lisa A. Wilson  
Clerk of the District Court

Dated: November 19, 2018

Johnson County Court House, 100 N. Kansas Ave. Olathe, KS 66061

Clerk of the District Court, Johnson County Kansas  
11/19/2018 12:30:58 HS

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL DIVISION**

MICHAEL MARKSBERRY	)	
	)	
Plaintiff,	)	
v.	)	
	)	
FCA US LLC	)	
f/k/a/ CHRYSLER GROUP LLC	)	
Serve at Registered Agent:	)	
The Corporation Company	)	Case No.
112 SW 7 <sup>th</sup> Street, Suite 3C	)	
Topeka, KS 66603	)	Division:
	)	
and	)	
	)	
LANDERS MCLARTY OLATHE KS,	)	
LLC	)	
-d/b/a/ OLATHE DODGE CHRYSLER	)	
JEEP RAM	)	
Serve Registered Agent:	)	
The Corporation Company	)	
112 SW 7 <sup>th</sup> Street, Suite 3C	)	
Topeka, KS 66603	)	
	)	
Defendants.	)	

**PLAINTIFF'S PETITION FOR DAMAGES**

Comes now Plaintiff Michael Marksberry, by and through counsel, and for his Petition for Damages against FCA US LLC and Landers McLarty Olathe KS, LLC, states and alleges as follows:

**NATURE OF THE CLAIM**

1. This is a case for breach of warranty and violation of the Magnuson-Moss Warranty Act ("MMWA"), breach of the Implied Warranty of Merchantability, and Violations of the Kansas Consumer Protection Act ("KCPA") against the collaborative deceptive and

unconscionable acts of Chrysler and Olathe Dodge in circumventing Plaintiff's lifetime warranty provided to Plaintiff by Defendant Chrysler at the time Plaintiff purchased the subject vehicle.

2. Plaintiff's lifetime warranty could only lapse if Plaintiff did not have "a powertrain inspection performed by an authorized Chrysler, Dodge, or Jeep dealer once every 5 years...made within sixty (60) days of each 5 year anniversary of the in-service date of the vehicle." Effectively, Plaintiff had a 120-day window around the date of his vehicle's in-service date.

3. Within the 120-day window, Plaintiff took his vehicle in to an authorized dealer, Olathe Dodge, for a routine oil change. Olathe Dodge also performed a twenty-three-point inspection on the vehicle.

4. Approximately seventeen months later, Plaintiff noticed his vehicle making strange ticking noises and decided to take it back to Olathe Dodge for service with the understanding his vehicle was still under the lifetime warranty.

5. Plaintiff's vehicle did in fact have mechanical issues with broken bolts in the exhaust manifold, an ongoing issue with vehicles like Plaintiff's the dealer was aware of, but unbeknownst to Plaintiff, was no longer subject to the lifetime warranty because Olathe Dodge did not perform the required "powertrain inspection" during the December 22, 2014 service. Thus, the 120-window lapsed.

6. Since the day he purchased the vehicle, Plaintiff took it to Olathe Dodge every 3,000 miles to be serviced. Despite the vehicle being at Olathe Dodge during the relevant window, the dealer did not perform the required five-year anniversary "powertrain inspection," allowing the vehicle's lifetime warranty to expire.

**JURISDICTION & VENUE**

7. Jurisdiction and venue in the District Court of Johnson County are proper because Defendant Landers McLarty Olathe KS, LLC has its principal place of business in Johnson County, Kansas and while Defendant FCA US, LLC is a non-resident, the subject conduct of each defendant that violated the Kansas Consumer Protection Act occurred within Johnson County, Kansas.

**PARTIES**

8. Plaintiff Michael Marksberry ("Mike" or "Plaintiff") is a person who resides in Olathe, Kansas.

9. Mike is a "consumer" under the Kansas Consumer Protection Act ("KCPA"), specifically K.S.A. § 50-624 (b).

10. Defendant FCA US, LLC f/k/a Chrysler Group LLC ("FCA" or "Chrysler") is a Delaware Limited Liability Company with its principal place of business in Michigan. Chrysler can be served by serving its registered agent, The Corporation Company, Inc., at 112 SW 7th Street, Suite 3C, Topeka, Kansas 66603.

11. Defendant Landers McLarty Olathe KS, LLC, d/b/a/ Olathe Dodge Chrysler Jeep Ram ("Olathe Dodge") is a limited liability company that can be served by serving its registered agent, The Corporation Company, Inc., at 112 SW 7th Street, Suite 3C, Topeka, Kansas 66603.

**FACTS RELEVANT TO ALL CLAIMS**

12. On October 31, 2009, Michael Marksberry was in the market for a new truck and purchased a 2009 Dodge Ram 1500 ("Ram" or "subject vehicle") from Defendant Olathe Dodge's dealership.

13. Mike's Ram came with a Lifetime Powertrain Limited Warranty ("Warranty"), covering costs of all parts and labor needed to repair powertrain components defective in workmanship and materials. Intake and exhaust manifolds and seals and gaskets for such components are included in the coverage.

14. In truth, the Warranty was not a Lifetime warranty. Rather, it was a five-year warranty, which could be extended for an additional five years (though with no limit on the number of five-year extensions that could be received) if the owners took certain steps.

15. To maintain the Warranty, the person it covers needs to have a "powertrain inspection" performed by an authorized Chrysler dealer once every five years from the in-service date, October 31, 2009 in Plaintiff's case. The terms of the Warranty permit that inspection to take place either 120 days before or 120 days after the five-year mark. Put another way, had Plaintiff had the "powertrain inspection" conducted anytime between August 3, 2014 and December 30, 2014, this requirement would have been satisfied.

16. Since the date Mike purchased the Ram, he has taken it back to an authorized Chrysler dealer, Olathe Dodge, every 3,000 miles for routine service and inspections.

17. On December 22, 2014, Mike brought the Ram back to Olathe Dodge for an oil change.

18. December 22, 2014, was within the 120-day before/after window to satisfy the "powertrain inspection."

19. During the oil change, Olathe Dodge also performed a twenty-three-point inspection of the Ram. Unbeknownst to Mike, Olathe Dodge did not perform the required "powertrain inspection."

20. Mike continued to bring his Ram to Olathe Dodge for routine service and inspections, unaware his window for the “powertrain inspection” passed on or about December 30, 2014, voiding his Warranty.

21. In April 2016, Mike noticed his Ram making strange ticking noises. On May 7, 2016, he brought it back to Olathe Dodge for an inspection. Olathe Dodge found broken bolts in or on the exhaust manifold.

22. The exhaust manifold issue was ongoing in 2009 Dodge Ram 1500 engines. In fact, on February 17, 2011, Chrysler sent a TSB (Technical Service Bulletin) to all Chrysler, Dodge, and Jeep dealerships in the United States describing exactly what Mike’s Ram exhibited and how to repair the issue. Upon information and belief, Olathe Dodge received that TSB.

23. Because Chrysler and/or Olathe Dodge refused to honor the Warranty, Mike was forced to pay approximately \$1,323.53 to make the repairs on or about May 10, 2016.

24. At the time of those repairs, the Ram had less than 56,000 miles.

25. Ironically, the Repair Order Olathe Dodge gave Plaintiff indicates that the Warranty would not expire until October 31, 2019:

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN / OUT	TAG	
DEEP-WATER	09	DODGE RAM 1500	1D3HB13T69J514815		55590/55590	T377	
DEL. DATE	PROD. DATE	WARR. EXP.	PROMISED	PO. NO.	RATE	PAYMENT	INV. DATE
31OCT09 DE		31OCT2019	18:45 07MAY16		0.00	CASH	10MAY16

26. Olathe Dodge asserts it was Mike’s responsibility to ask for the required inspection. Mike, however, had not only purchased the Ram from Olathe Dodge, but continued to bring it to Olathe Dodge for routine service and inspections for over five years. Olathe Dodge knew or should have known the Ram was due for the five-year anniversary required inspection.

27. The Warranty does not expressly require Plaintiff request the authorized dealer to perform the required inspection.



28. Mike never received a notice of any kind from Chrysler or Olathe Dodge informing him his required inspection date was nearing or was about to pass.

29. After Chrysler sent Olathe Dodge the September 22, 2011 TSB, Olathe Dodge did not inform Mike his Ram's exhaust manifold was subject to mechanical issues, despite Mike routinely taking the Ram to Olathe Dodge for another four or more years after the TSB. Olathe Dodge likely withheld this information and withheld inspecting the potential issue because Chrysler tells the dealerships in its TSB to perform the repairs, "if customers complain." Since Mike did not experience the issue until after the warranty was voided, he never had the opportunity to complain to Olathe Dodge about such an issue. Accordingly, this problem was actively concealed from him by both Chrysler and Olathe Dodge.

30. Concerned, Mike called Chrysler's hotline to inquire about the known 2009 Dodge Ram 1500 defects and the TSB. Chrysler told Mike it was up to the dealership (Olathe Dodge) to decide if the repairs would be reimbursed, so Mike called Olathe Dodge. Olathe Dodge told him it was up to Chrysler to decide if the repairs would be reimbursed.

31. To this day, neither Chrysler nor Olathe Dodge has honored the Lifetime Powertrain Limited Warranty given to Mike for this issue or reimbursed Mike for the repairs made to an issue well known to exist by both Olathe Dodge and Chrysler.

32. Upon information and belief, thousands of other consumers in Kansas and across the nation have had Lifetime Warranties issued by Chrysler invalidated because the requirements to maintain the warranty were concealed from them and/or because Chrysler-authorized dealerships failed (and/or were instructed by Chrysler not to) conduct the required inspections.

33. The defendants in this case are vicariously liable for the acts and omissions of their agents and employees.

**COUNT ONE**  
**VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT**

All Defendants

34. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully set forth herein.

35. The purchase of the Ram by Plaintiff constitutes a “consumer transaction” under the KCPA, specifically K.S.A. § 50-624 (c).

36. Additionally, Plaintiffs’ visits to Olathe Dodge for routine maintenance, inspections, and/or service were each a separate “consumer transaction.”

37. Plaintiff purchased the Ram in Kansas primarily for personal, family, household, business, and/or agricultural purposes.

38. Plaintiff has been damaged and is “aggrieved” pursuant to the KCPA as a result of Defendants’ conduct.

39. Defendant Chrysler is a “supplier” under the KCPA, specifically K.S.A. § 50-624 (l).

40. Chrysler is a manufacturer who, in the ordinary course of business, solicits, engages in, or enforces consumer transactions, typically dealing indirectly with consumers (i.e. through dealerships, such as Olathe Dodge).

41. Defendant Olathe Dodge is a “supplier” under the KCPA, specifically K.S.A. § 50-624 (l).

42. Olathe Dodge is a dealer who, in the ordinary course of business, solicits, engages in, and/or enforces consumer transactions, typically dealing directly with the consumer.

43. The KCPA should be liberally construed to promote its policies of protecting consumers against suppliers that commit deceptive and unconscionable practices. K.S.A. § 50-

623; *Williamson v. Amrani*, 283 Kan. 227, 234, 152 P.3d 60, 67 (2007).

44. Defendants' violations of K.S.A. § 50-626, Deceptive Acts and Practices, include, but are not limited to:

- a. Representing, knowingly or with reason to know, that the subject vehicle had uses and/or benefits that it does not and did not have, in violation of K.S.A. § 50-626(b)(1)(A);
- b. Representing, knowingly or with reason to know, that the subject vehicle was of a particular standard, quality, grade, style, and/or model, when they were of another which differs and/or differed materially from the representation(s), in violation of K.S.A. § 50-626(b)(1)(D);
- c. Representing, knowingly or with reason to know and without a reasonable basis to rely upon, that the subject vehicle had uses, benefits, and/or characteristics that it did not, in violation of K.S.A. § 50-626(b)(1)(F);
- d. Willfully using, in oral and/or written representation(s), exaggeration(s), falsehood(s), innuendo(s), and/or ambiguity(ies) as to material fact(s) in the subject Warranty, in violation of K.S.A. § 50-626(b)(2);
- e. Willfully failing to state a material fact, or willfully concealing, suppressing, or omitting a material fact about the subject Warranty's expiration to the detriment of Plaintiff, in violation of K.S.A. § 50-626(b)(3);
- f. Failing to perform the required inspection while the subject vehicle was in Olathe Dodge's possession, in violation of K.S.A. § 50-626(b)(1)(A), 626(b)(2), 626(b)(6), and *Haag v. Dry Basement, Inc.*, 11 Kan. App. 2d 649, 652-54 (Kan. Ct. App. 1987) (affirming district court which held that breach of warranty is a violation of 50-626);
- g. Failing to honor the subject express written warranty while knowing of the required inspection at issue, in violation of K.S.A. § 50-626(b)(1)(A), 626(b)(2), 626(b)(6), and *Haag v. Dry Basement, Inc.*, 11 Kan. App. 2d 649, 652-54 (Kan. Ct. App. 1987) (affirming district court which held that breach of warranty is a violation of 50-626);
- h. Failing to disclose the subject vehicle's known defect during each visit to Olathe Dodge's service shop after September 22, 2011, in violation of K.S.A. § 50-626(b)(3).
- i. Failing to honor the subject express written warranty while knowing of the inherent defect(s) at issue, in violation of K.S.A. § 50-626(b)(1)(A), 626(b)(2), 626(b)(6), and *Haag v. Dry Basement, Inc.*, 11 Kan. App. 2d 649, 652-54 (Kan.

Ct. App. 1987) (affirming district court which held that breach of warranty is a violation of 50-626);

- j. Misleading Plaintiff as to who is responsible for or makes the final decision as to the exhaust manifold repairs and reimbursements, in violation of K.S.A. § 50-626(b)(2) and (3); and,
- k. Engaging in a pattern of conduct, when taken in its totality, is deceptive.

45. Defendants' violations of K.S.A. § 50-627, Unconscionable Acts and Practices,

include, but are not limited to:

- a. Generally making unconscionable representations and/or misrepresentations, and/or engaging in unconscionable conduct, in violation of K.S.A. § 50-627 (a) including, but not limited to:
  - (i) The Defendants took advantage of the inability of Plaintiff reasonably to protect his interests because of his physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor, when they did not make it clear it was the Plaintiff's responsibility to request the required inspection, in violation of K.S.A. § 50-627(b)(1);
  - (ii) Failing to honor the subject Warranty while knowing of the required inspection at issue and failing to perform it, in violation of K.S.A. § 50-627(b)(3);
  - (iii) Failing to honor the subject Warranty in general while knowing of the inherent defect(s) at issue, in violation of K.S.A. § 50-627(b)(3); and,
  - (iv) The transaction Defendants induced Plaintiff into was excessively one-sided in favor of Defendants, in violation of K.S.A. § 50-627(b)(5); and,
  - (v) Engaging in a pattern of conduct, when taken in its totality, is unconscionable.

46. In short, Defendants either lied to Plaintiff about whether his warranty was still in effect so as to pocket extra money, or Olath Dodge misled and concealed from Plaintiff the material fact that it did not conduct a "powertrain inspection" on December 22, 2014 (and/or concealed the necessity of that inspection from Plaintiff).

47. Plaintiff is entitled to the recovery of his reasonable attorneys fees, pursuant to K.S.A. § 50-634(c).

WHEREFORE, Plaintiff prays for judgment against Chrysler and Olathe Dodge in such amount as is allowable by law and to be determined at trial, for their actual damages, pre- and post-judgment interest at the greatest rate allowed by statute, for their reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

**COUNT TWO**  
**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**  
Defendant FCA US LLC

48. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully set forth herein.

49. Plaintiff is a "consumer" as defined in 15 U.S.C. § 2301(3).

50. Plaintiff purchased the Ram.

51. Defendant Chrysler is a "supplier and "warrantor" as defined in 15 U.S.C. § 2301(4)(5).

52. Chrysler is in the business of making consumer products (such as the Ram) available to consumers both directly and indirectly.

53. Chrysler gives written warranties to consumers who purchase the vehicles it makes.

54. The Ram is a "consumer product" as defined in 15 U.S.C. § 2301(1).

55. Chrysler's "Lifetime Powertrain Limited Warranty" was a "written warranty" as defined by 15 U.S.C. § 2301(6).

56. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

57. Despite routinely bringing the Ram into an authorized dealer for service and inspections and despite doing so during the 120-day window for the five-year anniversary of the Ram's in-service date, the authorized dealer failed to perform the required "powertrain inspection," voiding Plaintiff's Lifetime Powertrain Limited Warranty. Furthermore, Chrysler does not expressly say in the express warranty it is Plaintiff's responsibility to actively request such an inspection. Chrysler thus refused to cover the repairs to the exhaust manifold, in breach of the written warranty and implied warranties applicable to the subject vehicle.

58. Plaintiff has provided Defendant Chrysler with more than a reasonable opportunity to reimburse all the repair payments for the Ram's failures that should be covered under the Warranty.

59. As a result of Defendant Chrysler's breaches of written and implied warranties as set forth above, and its inability to remedy same without charge to Plaintiff, Plaintiff has suffered substantial damages, as pled in more detail above.

WHEREFORE, Plaintiff prays for judgment against Chrysler in such amount as is allowable by law and to be determined at trial, for his actual damages, pre- and post-judgment interest at the greatest rate allowed by statute, for his reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

**COUNT THREE:**  
**BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**  
All Defendants

60. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully set forth herein.

61. Chrysler and Olathe Dodge are Merchants with respect to goods of the kind. *See* K.S.A. § 84-2-104(1) and § 84-2-314(1).

62. Defendants delivered and/or sold goods to Plaintiff.

63. The Ram is a “good”.

64. As detailed more fully above, the subject vehicle was not “merchantable,” as described at K.S.A. § 84-2-314(2).

65. The above-described defect(s) were present when the subject vehicles left Defendants’ control.

66. The defect(s) described above are not and were not open and/or obvious, as they are and/or were latent, and, in some cases, would not manifest for some time.

67. In Mike’s case, the defect did not manifest until early 2016.

68. As a direct and proximate result of the defect(s) described herein and Chrysler’s failure to remedy the problems, Plaintiff has been financially damaged.

69. Plaintiff’s damages include, but are not limited to, diminution of value of the subject vehicle.

WHEREFORE, Plaintiff prays for judgment against Chrysler and Olathe Dodge in such amounts as are allowed by law and to be determined at trial, for his actual damages, incidental damages, compensatory damages, consequential damages, pre- and post-judgment interest at the greatest rate allowed by law, and for any such further relief as may be just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

70. Plaintiff hereby demands a jury trial on all issues so triable.

Respectfully submitted,

/s/ Mark W. Schmitz

Bryce B. Bell      KS#20866

Mark W. Schmitz    KS#27538

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# **Exhibit 2**

**Amended Petition Filed 11/22/19**

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL DIVISION**

MICHAEL MARKSBERRY	)		
	)		
Plaintiff,	)		
v.	)	Case No.	18cv06439
	)		
FCA US LLC	)	Division	7
f/k/a/ CHRYSLER GROUP LLC	)		
	)		
and	)		
	)		
LANDERS MCLARTY OLATHE KS,	)		
LLC	)		
d/b/a/ OLATHE DODGE CHRYSLER	)		
JEEP RAM	)		
	)		
Defendants.	)		

**PLAINTIFF’S FIRST AMENDED PETITION FOR DAMAGES**

Comes now Plaintiff Michael Marksberry, by and through counsel, and for his Petition for Damages against FCA US LLC (“FCA”) and Landers McLarty Olathe KS, LLC (“Olathe Dodge”), states and alleges as follows:

**NATURE OF THE CLAIM**

1. There are two components and core claims to this case. The first is a standard breach of warranty claim against the manufacturer, relating specifically to the manifold bolt issue Plaintiff experienced. The latter is a broader claim, generally alleging the FCA has concealed ‘requirements’ so as to disclaim what it called a “Lifetime” warranty which it issued to Plaintiff and, upon information and belief, hundreds of thousands of other consumers since 2009.

2. According to FCA, Plaintiff’s lifetime warranty could only lapse if Plaintiff did not have “a powertrain inspection performed by an authorized Chrysler, Dodge, or Jeep dealer once every 5 years...made within sixty (60) days of each 5 year anniversary of the in-service date of the vehicle.” FCA has represented to this Court that this meant Plaintiff had a 120-day

window around the 5 year anniversary of his vehicle’s in-service date—60 days before, or 60 days after.

3. However, within that 120-day window, Plaintiff *did* take his vehicle in to an authorized dealer, Olathe Dodge. During that visit, Olathe Dodge performed a routine oil change and conducted a twenty-three-point inspection on the vehicle. Neither Olathe Dodge nor FCA told Plaintiff that he needed a separate inspection and/or that Olathe Dodge had not performed that separate inspection during this visit.

4. Approximately seventeen months later, Plaintiff noticed his vehicle making strange ticking noises and decided to take it back to Olathe Dodge for service with the understanding his vehicle was still under the lifetime warranty.

5. Plaintiff’s vehicle did in fact have mechanical issues with broken bolts in the exhaust manifold, an ongoing issue with vehicles like Plaintiff’s the dealer was aware of, but unbeknownst to Plaintiff, was no longer subject to the lifetime warranty because Olathe Dodge did not perform the required “powertrain inspection” during the December 22, 2014 service. Thus, the 120-window lapsed.

6. Since the day he purchased the vehicle, Plaintiff took it to Olathe Dodge every 3,000 miles to be serviced. Despite the vehicle being at Olathe Dodge during the relevant window, the dealer did not perform the required five-year anniversary “powertrain inspection,” allowing the vehicle’s lifetime warranty to expire.

### **JURISDICTION & VENUE**

7. Jurisdiction and venue in the District Court of Johnson County are proper because Defendant Landers McLarty Olathe KS, LLC has its principal place of business in Johnson County, Kansas and while Defendant FCA US, LLC is a non-resident, the subject conduct of

each defendant that violated the Kansas Consumer Protection Act occurred within Johnson County, Kansas.

### **PARTIES**

8. Plaintiff Michael Marksberry (“Mike” or “Plaintiff”) is a person who resides in Olathe, Kansas.

9. Mike is a “consumer” under the Kansas Consumer Protection Act (“KCPA”), specifically K.S.A. § 50-624 (b).

10. Defendant FCA US, LLC f/k/a Chrysler Group LLC (“FCA” or “Chrysler”) is a Delaware Limited Liability Company with its principal place of business in Michigan. Chrysler can be served by serving its registered agent, The Corporation Company, Inc., at 112 SW 7th Street, Suite 3C, Topeka, Kansas 66603.

11. Defendant Landers McLarty Olathe KS, LLC, d/b/a/ Olathe Dodge Chrysler Jeep Ram ("Olathe Dodge") is a limited liability company that can be served by serving its registered agent, The Corporation Company, Inc., at 112 SW 7th Street, Suite 3C, Topeka, Kansas 66603.

### **FACTS RELEVANT TO ALL CLAIMS**

12. On October 31, 2009, Michael Marksberry was in the market for a new truck and purchased a 2009 Dodge Ram 1500 (“Ram” or “subject vehicle”) from Defendant Olathe Dodge’s dealership.

13. Mike’s Ram came with a Lifetime Powertrain Limited Warranty (“Lifetime Warranty”), covering costs of all parts and labor needed to repair powertrain components defective in workmanship and materials. Intake and exhaust manifolds and seals and gaskets for such components are included in the coverage.

14. Chrysler began issuing this Lifetime Warranty at least as early as 2007. The Lifetime Warranty was rolled out and extended to all 2006 and later Model Year Vehicles, so long as they were purchased and delivered “on or after July 26, 2007” and were still with the original purchaser or retail lessee.

15. Contrary to its name, the Lifetime Warranty does not actually last for the life of the vehicle. Rather, it was a five-year warranty, which could be extended for an additional five years (though with no limit on the number of five-year extensions that could be received) if the owners took certain steps.

16. To maintain the Lifetime Warranty, the person it covers needs to have a “powertrain inspection” performed by an authorized Chrysler dealer once every five years from the in-service date, October 31, 2009 in Plaintiff’s case. The terms of the Warranty permit that inspection to take place either 120 days before or 120 days after the five-year mark. Put another way, had Plaintiff had the “powertrain inspection” conducted anytime between August 3, 2014 and December 30, 2014, this requirement would have been satisfied.

17. Since the date Mike purchased the Ram, he has taken it back to an authorized Chrysler dealer, Olathe Dodge, every 3,000 miles for routine service and inspections.

18. On December 22, 2014, Mike brought the Ram back to Olathe Dodge for an oil change.

19. December 22, 2014, was within the 120-day window to satisfy the “powertrain inspection.”

20. During the oil change, Olathe Dodge also performed a twenty-three-point inspection of the Ram. Unbeknownst to Mike, Olathe Dodge did not perform the required “powertrain inspection.”

21. Mike continued to bring his Ram to Olathe Dodge for routine service and inspections, unaware his window for the “powertrain inspection” passed on or about December 30, 2014, voiding his Warranty.

22. In April 2016, Mike noticed his Ram making strange ticking noises. On May 7, 2016, he brought it back to Olathe Dodge for an inspection. Olathe Dodge found broken bolts in or on the exhaust manifold.

23. The exhaust manifold issue was ongoing in 2009 Dodge Ram 1500 engines. In fact, on February 17, 2011, Chrysler sent a TSB (Technical Service Bulletin) to all Chrysler, Dodge, and Jeep dealerships in the United States describing exactly what Mike’s Ram exhibited and how to repair the issue. Upon information and belief, Olathe Dodge received that TSB.

24. Because Chrysler and/or Olathe Dodge refused to honor the Warranty, Mike was forced to pay approximately \$1,323.53 to make the repairs on or about May 10, 2016.

25. At the time of those repairs, the Ram had less than 56,000 miles.

26. Ironically, the Repair Order Olathe Dodge gave Plaintiff indicates that the Warranty would not expire until October 31, 2019:

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN / OUT	TAG	
DEEP-WATER	09	DODGE RAM 1500	1D3HB13T69J514815		55590/55590	T377	
DEL. DATE	PROD. DATE	WARR. EXP.	PROMISED	PO NO.	RATE	PAYMENT	INV. DATE
31OCT09 DE		31OCT2019	18:45 07MAY16		0.00	CASH	10MAY16

27. Olathe Dodge asserts it was Mike’s responsibility to ask for the required inspection. Mike, however, had not only purchased the Ram from Olathe Dodge, but continued to bring it to Olathe Dodge for routine service and inspections for over five years. Olathe Dodge knew or should have known the Ram was due for the five-year anniversary required inspection.

28. The Warranty does not require Plaintiff request the authorized dealer to perform the required inspection.

29. Mike never received a notice of any kind from Chrysler or Olathe Dodge informing him his required inspection date was nearing or was about to pass.

30. After Chrysler sent Olathe Dodge the September 22, 2011 TSB, Olathe Dodge did not inform Mike his Ram's exhaust manifold was subject to mechanical issues, despite Mike routinely taking the Ram to Olathe Dodge for another four or more years after the TSB. Olathe Dodge likely withheld this information and withheld inspecting the potential issue because Chrysler tells the dealerships in its TSB to only perform the repairs, "if customers complain." Since Mike did not experience the issue until after the warranty was allegedly voided, he never had the opportunity to complain to Olathe Dodge about such an issue. Accordingly, this problem was actively concealed from him by both Chrysler and Olathe Dodge.

31. Concerned, Mike called Chrysler's hotline to inquire about the known 2009 Dodge Ram 1500 defects and the TSB. Chrysler told Mike it was up to the dealership (Olathe Dodge) to decide if the repairs would be reimbursed, so Mike called Olathe Dodge. Olathe Dodge told him it was up to Chrysler to decide if the repairs would be reimbursed.

32. To this day, neither Chrysler nor Olathe Dodge has honored the Lifetime Powertrain Limited Warranty given to Mike for this issue or reimbursed Mike for the repairs made to an issue well known to exist by both Olathe Dodge and Chrysler.

33. Upon information and belief, thousands of other consumers in Kansas and across the nation have had Lifetime Warranties issued by Chrysler, and then later invalidated and/or not honored because the requirements to maintain the warranty were concealed from them and/or because Chrysler-authorized dealerships failed (and/or were instructed by Chrysler not to) conduct the required inspections.

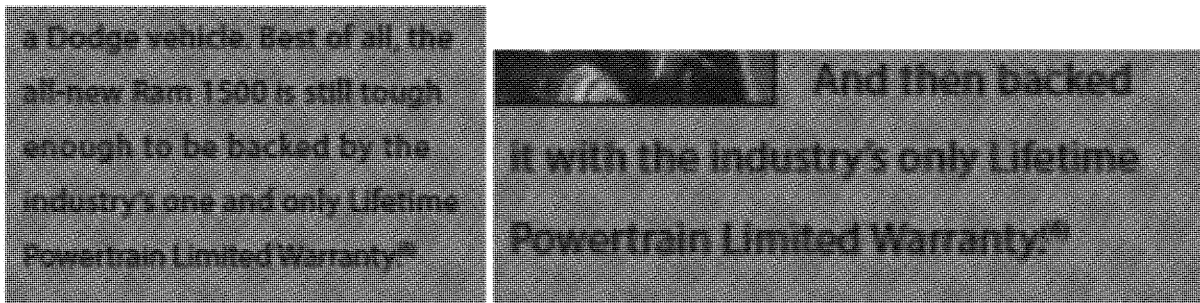
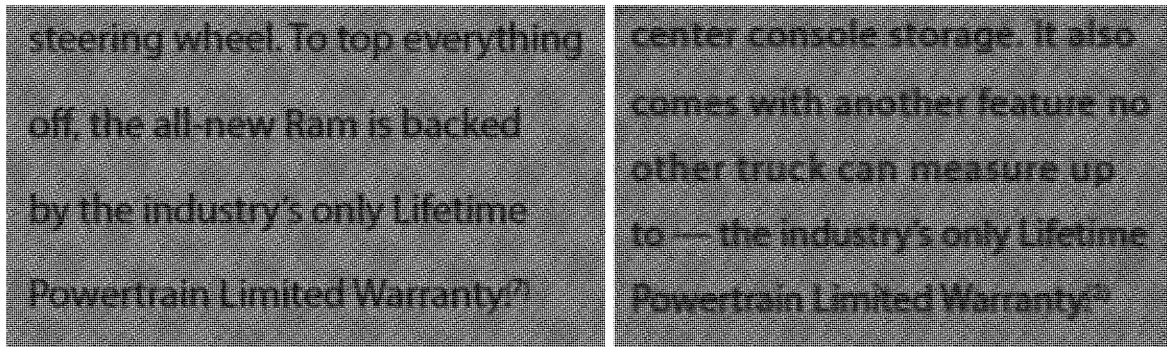
34. The defendants in this case are vicariously liable for the acts and omissions of their agents and employees.

**EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT**

35. Any applicable statute(s) of limitations have been tolled by Chrysler’s illegal, deceptive, and fraudulent practices. Chrysler concealed from Plaintiff and the proposed Classes the truth about their illegal, deceptive, and fraudulent practices described herein, thereby tolling the running of any applicable statutes of limitations.

36. Chrysler accomplished this (in addition to the measures outlined above) by aggressively marketing the Lifetime Warranty as a *Lifetime* warranty. For instance, many of Chrysler’s print advertisements proudly boasted the Lifetime Warranty and also described it as the only one in the industry:

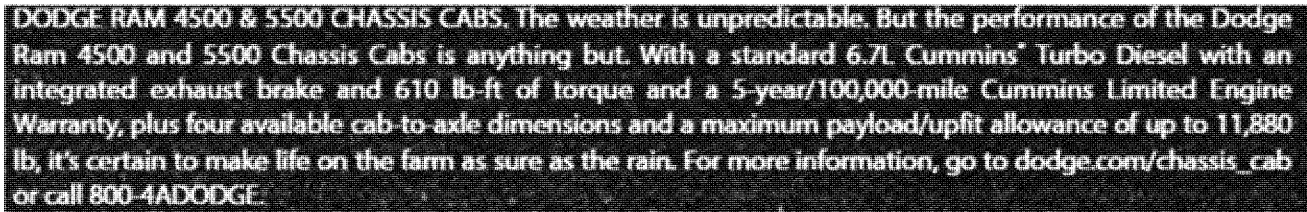
**POWERTRAINS THAT DELIVER DECADES OF PERFORMANCE...  
...ALL BACKED BY A LIFETIME POWERTRAIN WARRANTY.**





37. Plaintiff viewed either these advertisements, or others that were substantially similar.

38. In contrast, Chrysler's advertisements for other warranties correctly described them as being for a specific duration. For instance, here is how it advertised the warranty it offered for its Cummins Turbo Diesel engines during the same time period:

An advertisement for Dodge Ram 4500 and 5500 Chassis Cabs. The text is white on a dark, textured background. It describes the vehicle's performance, engine specifications (6.7L Cummins Turbo Diesel), and warranty details (5-year/100,000-mile Cummins Limited Engine Warranty). It also mentions cab-to-axle dimensions and a maximum payload/upfit allowance of up to 11,880 lb. The ad concludes with a call to action to visit dodge.com/chassis\_cab or call 800-4ADODGE.

DODGE RAM 4500 & 5500 CHASSIS CABS. The weather is unpredictable. But the performance of the Dodge Ram 4500 and 5500 Chassis Cabs is anything but. With a standard 6.7L Cummins™ Turbo Diesel with an integrated exhaust brake and 610 lb-ft of torque and a 5-year/100,000-mile Cummins Limited Engine Warranty, plus four available cab-to-axle dimensions and a maximum payload/upfit allowance of up to 11,880 lb, it's certain to make life on the farm as sure as the rain. For more information, go to [dodge.com/chassis\\_cab](http://dodge.com/chassis_cab) or call 800-4ADODGE.

39. Chrysler's motivation is clear. If it honestly advertised the Lifetime Warranty as a 5-year (extendable) warranty, then it could not also tout it as the only *Lifetime* warranty available in the industry.

40. Plaintiff routinely took his vehicle in for all of its scheduled and manufacturer's-recommended maintenance. He also took his vehicle in to an authorized dealership during the requisite inspection window. Despite all of that, Plaintiff did not even learn the truth.

41. Accordingly, Chrysler is estopped from relying on any statute of limitations defense(s) because of its illegal, deceptive, and fraudulent practices alleged herein.

### **CLASS ACTION ALLEGATIONS**

42. As outlined above, this case has two core claims: the manifold bolt issue, and the five-year inspection issue. Plaintiff seeks to represent a class of similarly situated persons with respect to the latter.

43. To this end, Plaintiff proposes to represent the following class of persons:

#### **Nationwide class**

All persons who purchased a vehicle from Defendant FCA US LLC and were provided a Lifetime Powertrain Limited Warranty on or after October 31, 2009.

44. In the alternative, Plaintiff proposes to represent the following class of persons:

**Kansas class**

All persons who purchased, in the state of Kansas, a vehicle from Defendant FCA US LLC and were provided a Lifetime Powertrain Limited Warranty on or after October 31, 2009.

45. Plaintiff proposes that the following persons be excluded from the Class: (1) Class Counsel; (2) Defendants, and any entity in which any Defendant has a controlling interest or which has a controlling interest in any of the Defendants; any of the officers, directors, managers, members, or employees of the Defendants; any judge(s) to whom this case is assigned, along with his or her immediate family; and (5) any persons who have previously settled these claims against Defendants.

46. Numerosity. Plaintiff does not know the exact number of class members, but believes it to be in the hundreds of thousands, if not over a million, given the length of the class and the fact that the warranty is a “Lifetime” warranty.

47. Commonality. There are common questions of law and fact in this case, including but not limited to, the following:

- a. Did FCA communicate to the Class the 5-year inspection requirement;
- b. Does FCA have an obligation to communicate that requirement to the Class;
- c. Did the Class need to *specifically ask for* the “powertrain inspection” to maintain their “Lifetime” warranty;
- d. Did FCA breach its warranty;
- e. Are Plaintiff and the Class entitled to damages, and in what amount?

48. Typicality. Plaintiff’s claims are typical of those of the class, in that he purchased a vehicle covered by FCA’s “Lifetime” warranty, developed a problem that should have been

covered under his warranty, but for which FCA did not honor the warranty, claiming that the “Lifetime” warranty had timed-out. Additionally, Plaintiff took his vehicle in to an FCA-authorized dealership during the requisite anniversary window.

49. Adequacy. Plaintiff is an adequate class representative in that he can and will vigorously prosecute these claims on behalf of the class. Plaintiff has retained competent counsel experienced in litigating these types of claims, and class claims generally. At this point, Plaintiff knows of no conflicts of interest with the class he seeks to represent.

50. Superiority. This class action is superior to all available methods for the fair and efficient adjudication of the controversy between the parties. Plaintiff is informed and believes that the interest of the members of the class in individually controlling the prosecution of a separate action is minimal. Plaintiff is informed and believe that the amounts at stake for individuals may be sufficiently small that individual and separate suits would be impracticable and that most members of the Class would likely not be able to find counsel to represent them.

51. Predominance. The common questions outlined above would predominate over any individual questions which might exist.

**CLASS COUNT ONE**  
**VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT**  
Plaintiff and All Class Members  
FCA US LLC Only

52. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully set forth herein.

53. The purchase of the Ram by Plaintiff constitutes a “consumer transaction” under the KCPA, specifically K.S.A. § 50-624 (c).

54. Additionally, Plaintiffs’ visits to Olathe Dodge for routine maintenance, inspections, and/or service were each a separate “consumer transaction.”

55. Plaintiff purchased the Ram in Kansas primarily for personal, family, household, business, and/or agricultural purposes.

56. Plaintiff has been damaged and is “aggrieved” pursuant to the KCPA as a result of Defendants’ conduct.

57. Defendant Chrysler is a “supplier” under the KCPA, specifically K.S.A. § 50-624 (l).

58. Chrysler is a manufacturer who, in the ordinary course of business, solicits, engages in, or enforces consumer transactions, typically dealing indirectly with consumers (i.e. through dealerships, such as Olathe Dodge).

59. The KCPA should be liberally construed to promote its policies of protecting consumers against suppliers that commit deceptive and unconscionable practices. K.S.A. § 50-623; *Williamson v. Amrani*, 283 Kan. 227, 234, 152 P.3d 60, 67 (2007).

60. Defendants’ violations of K.S.A. § 50-626, Deceptive Acts and Practices, include, but are not limited to:

- a. Representing, knowingly or with reason to know, that the subject vehicle had uses and/or benefits that it does not and did not have, in violation of K.S.A. § 50-626(b)(1)(A);
- b. Representing, knowingly or with reason to know, that the subject vehicle was of a particular standard, quality, grade, style, and/or model, when they were of another which differs and/or differed materially from the representation(s), in violation of K.S.A. § 50-626(b)(1)(D);
- c. Representing, knowingly or with reason to know and without a reasonable basis to rely upon, that the subject vehicle had uses, benefits, and/or characteristics that it did not, in violation of K.S.A. § 50-626(b)(1)(F);
- d. Willfully using, in oral and/or written representation(s), exaggeration(s), falsehood(s), innuendo(s), and/or ambiguity(ies) as to material fact(s) in the subject Warranty, in violation of K.S.A. § 50-626(b)(2), by advertising the Lifetime Warranty as a *lifetime* warranty;

- e. Willfully failing to state a material fact, or willfully concealing, suppressing, or omitting a material fact about the subject Warranty's expiration to the detriment of Plaintiff and the proposed Class, in violation of K.S.A. § 50-626(b)(3);
- f. Failing to honor the subject express written warranty, in violation of K.S.A. § 50-626(b)(1)(A), 626(b)(2), 626(b)(6), and *Haag v. Dry Basement, Inc.*, 11 Kan. App. 2d 649, 652-54 (Kan. Ct. App. 1987) (affirming district court which held that breach of warranty is a violation of 50-626);
- g. Misleading Plaintiff as to who is responsible for, or makes the final decision as to, the exhaust manifold repairs and reimbursements, in violation of K.S.A. § 50-626(b)(2) and (3); and,
- h. Engaging in a pattern of conduct, when taken in its totality, is deceptive.

61. Defendants' violations of K.S.A. § 50-627, Unconscionable Acts and Practices, include, but are not limited to:

- a. Generally making unconscionable representations and/or misrepresentations, and/or engaging in unconscionable conduct, in violation of K.S.A. § 50-627 (a) including, but not limited to:
  - (i) The Defendants took advantage of the inability of Plaintiff and the Class reasonably to protect their interests because of their physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor, when they did not make it clear it was the Plaintiff's responsibility to request the required inspection, in violation of K.S.A. § 50-627(b)(1);
  - (ii) Failing to honor the subject Warranty while knowing of the required inspection at issue and failing to perform it, in violation of K.S.A. § 50-627(b)(3);
  - (iii) Failing to honor the subject Warranty in general while knowing of the inherent defect(s) at issue, in violation of K.S.A. § 50-627(b)(3); and,
  - (iv) The transaction Defendants induced Plaintiff into was excessively one-sided in favor of Defendants, in violation of K.S.A. § 50-627(b)(5); and,
  - (v) Engaging in a pattern of conduct, when taken in its totality, is unconscionable.

62. In short, Chrysler misled Plaintiff and the putative Class Members, claiming that the Lifetime Warranty was a *lifetime* warranty when it was not.

63. Plaintiff is entitled to the recovery of his reasonable attorneys fees, pursuant to K.S.A. § 50-634(e).

WHEREFORE, Plaintiff, individually and on behalf of the proposed Classes, prays for judgment against Chrysler in such amount as is allowable by law and to be determined at trial, for their actual damages, pre- and post-judgment interest at the greatest rate allowed by statute, for their reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

**CLASS COUNT TWO**  
**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

Plaintiff and All Class Members  
Defendant FCA US LLC Only

64. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully set forth herein.

65. Plaintiff is a “consumer” as defined in 15 U.S.C. § 2301(3).

66. Plaintiff purchased the Ram.

67. Defendant Chrysler is a “supplier and “warrantor” as defined in 15 U.S.C. § 2301(4)(5).

68. Chrysler is in the business of making consumer products (such as the Ram) available to consumers both directly and indirectly.

69. Chrysler gives written warranties to consumers who purchase the vehicles it makes.

70. The Ram is a “consumer product” as defined in 15 U.S.C. § 2301(1).

71. Chrysler’s “Lifetime Powertrain Limited Warranty” was a “written warranty” as defined by 15 U.S.C. § 2301(6).

72. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is

damaged by the failure of a warrantor to comply with a written or implied warranty.

73. Despite routinely bringing the Ram into an authorized dealer for service and inspections and despite doing so during the 120-day window for the five-year anniversary of the Ram's in-service date, the authorized dealer failed to perform the required "powertrain inspection," voiding Plaintiff's Lifetime Powertrain Limited Warranty. Furthermore, Chrysler does not expressly say in the express warranty it is Plaintiff's responsibility to actively request such an inspection. Chrysler thus refused to cover the repairs to the exhaust manifold, in breach of the written warranty and implied warranties applicable to the subject vehicle.

74. Plaintiff has provided Defendant Chrysler with more than a reasonable opportunity to reimburse all the repair payments for the Ram's failures that should be covered under the Warranty.

75. As a result of Defendant Chrysler's breaches of written and implied warranties as set forth above, and its inability to remedy same without charge to Plaintiff, Plaintiff has suffered substantial damages, as pled in more detail above.

WHEREFORE, Plaintiff, individually and on behalf of the proposed Classes, prays for judgment against Chrysler in such amount as is allowable by law and to be determined at trial, for his actual damages, pre- and post-judgment interest at the greatest rate allowed by statute, for his reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

**COUNT THREE:**  
**BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

Plaintiff and All Class Members  
Defendant FCA US LLC Only

76. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully set forth herein.

77. Chrysler and Olathe Dodge are Merchants with respect to goods of the kind. *See* K.S.A. § 84-2-104(1) and § 84-2-314(1).

78. Defendants delivered and/or sold goods to Plaintiff.

79. The Ram is a “good”. As are all of the vehicles purchased by the Class members.

80. As detailed more fully above, the subject vehicle was not “merchantable,” as described at K.S.A. § 84-2-314(2).

81. The above-described defect(s) were present when the subject vehicles left Defendants’ control.

82. The defect(s) described above are not and were not open and/or obvious, as they are and/or were latent, and, in some cases, would not manifest for some time.

83. In Mike’s case, the defect did not manifest until early 2016.

84. As a direct and proximate result of the defect(s) described herein and Chrysler’s failure to remedy the problems, Plaintiff has been financially damaged.

85. Plaintiff’s damages include, but are not limited to, diminution of value of the subject vehicle.

WHEREFORE, Plaintiff, individually and on behalf of the proposed Classes, prays for judgment against Chrysler and Olathe Dodge in such amounts as are allowed by law and to be determined at trial, for his actual damages, incidental damages, compensatory damages, consequential damages, pre- and post-judgment interest at the greatest rate allowed by law, reasonable attorneys’ fees, and for any such further relief as may be just and proper under the circumstances.



**CLASS COUNT FOUR:**  
**FRAUD**

Plaintiff and All Class Members  
FCA US LLC Only

86. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully set forth herein.

87. Plaintiff brings this Count IV for Fraud on behalf of the proposed Classes and, alternatively, individually.

88. Chrysler represented to Plaintiff, and all proposed Class Members, that the Lifetime Limited Powertrain Warranty was a *lifetime* warranty (i.e. that it would not expire).

89. As outlined above, this representation was false. Chrysler clearly knew it to be false given the position it is taking in this case, that Plaintiff (and the proposed Class Members) are and were required to get a specific “powertrain inspection” completed every five years.

90. As outlined above, Chrysler prominently advertised the Lifetime Limited Powertrain Warranty as a *lifetime* warranty and as an industry exclusive, without disclosing any inspection requirement. Thus, Chrysler clearly intended the representations to induce consumers to act based upon these representations.

91. There was no way for Plaintiff and/or the proposed Class Members to learn that Chrysler’s representation was false before purchasing their respective vehicles. Accordingly, Plaintiff and the proposed Class Members reasonably relied upon Chrysler’s representations.

92. Indeed, Chrysler has actively suppressed the purported inspection requirement, tellingly omitting it from its advertisements. Tellingly, the purported inspection requirement does not even appear in the ‘fine print’ of its advertisements.

93. As a result of their reasonable reliance upon Chrysler's representations that the Lifetime Limited Powertrain Warranty was a *lifetime* warranty, Plaintiff and the proposed Class Members have been damaged.

94. Chrysler's actions, as outlined herein, were intentional, willful, wanton, fraudulent, reckless, and/or malicious.

WHEREFORE, Plaintiff, individually, prays for judgment against Olathe Dodge in such amounts as are allowed by law and to be determined at trial, for his actual damages, pre- and post-judgment interest at the greatest rate allowed by law, attorneys' fees, and for any such further relief as may be just and proper under the circumstances.

**CLASS COUNT FIVE:**  
**INJUNCTIVE RELIEF**

Plaintiff and All Class Members  
FCA US LLC Only

95. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully set forth herein.

96. Plaintiff seeks this injunctive relief on behalf of the proposed Classes. He has the right to do so pursuant to K.S.A. 50-634(c).

97. This Court has authority to issue injunctive relief pursuant to K.S.A. 50-634(a)(2) and K.S.A. Chapter 60, Article 9.

98. As outlined above, Chrysler is engaging in a pattern and practice of refusing to honor the Lifetime Limited Powertrain Warranties it issued to consumers in Kansas and nationwide.

99. Accordingly, a Permanent Injunction reasonably tailored to compelling Chrysler to honor those Lifetime Limited Powertrain Warranties in Kansas and nationwide.

100. To the extent this Court enters such an injunction pursuant to K.S.A. 50-634, Plaintiff is entitled to his reasonable costs and attorneys' fees for obtaining said injunction.

WHEREFORE, Plaintiff, individually and on behalf of the proposed class, prays for judgment against Chrysler in the form of a Permanent Injunction reasonably tailored to compelling Chrysler to honor all Lifetime Limited Powertrain Warranties it has issued, and for any such further relief as may be just and proper under the circumstances.

**INDIVIDUAL COUNT SIX:**  
**VIOLATION OF THE KANSAS CONSUMER PROTECTION ACT**

Plaintiff Only  
Defendant Olathe Dodge Only

101. Plaintiff incorporates by reference all facts and allegations set forth in the preceding paragraphs as though fully set forth herein.

102. Defendant Olathe Dodge is a "supplier" under the KCPA, specifically K.S.A. § 50-624 (1).

103. Olathe Dodge is a dealer who, in the ordinary course of business, solicits, engages in, and/or enforces consumer transactions, typically dealing directly with the consumer.

104. The sale of the subject vehicle to Plaintiff, along with each maintenance visit, each constitute a "consumer transaction."

105. Olathe Dodge's violations of K.S.A. 50-626 include, but are not limited to, the following:

- a. Failing to perform the required inspection while the subject vehicle was in Olathe Dodge's possession, in violation of K.S.A. § 50-626(b)(1)(A), 626(b)(2), 626(b)(6), and *Haag v. Dry Basement, Inc.*, 11 Kan. App. 2d 649, 652-54 (Kan. Ct. App. 1987) (affirming district court which held that breach of warranty is a violation of 50-626);
- b. Failing to disclose the subject vehicle's known defect during each visit to Olathe Dodge's service shop after September 22, 2011, in violation of K.S.A. § 50-626(b)(3);

- c. Misleading Plaintiff as to who is responsible for or makes the final decision as to the exhaust manifold repairs and reimbursements, in violation of K.S.A. § 50-626(b)(2) and (3); and,
- d. Engaging in a pattern of conduct, when taken in its totality, is deceptive.

106. Olathe Dodge's violations of K.S.A. 50-627 include, but are not limited to, the following:

- a. Failing to perform the required inspection while the subject vehicle was in Olathe Dodge's possession, in violation of K.S.A. 50-627(a).

107. As a result of Olathe Dodge's actions, Plaintiff has been aggrieved as outlined above.

108. Plaintiff is entitled to recover the greater of his actual damages or civil penalties against Olathe Dodge in the amount of \$10,000.00 for each violation found.

109. Plaintiff is further entitled to recover his costs and reasonable attorneys' fees.

WHEREFORE, Plaintiff, individually, prays for judgment against Olathe Dodge in such amounts as are allowed by law and to be determined at trial, for his actual damages, civil penalties, incidental damages, compensatory damages, consequential damages, pre- and post-judgment interest at the greatest rate allowed by law, attorneys' fees, and for any such further relief as may be just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

110. Plaintiff hereby demands a jury trial on all issues so triable.

Respectfully submitted,

/s/ Mark W. Schmitz

Bryce B. Bell           KS#20866

Mark W. Schmitz       KS#27538

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was filed with the Court's e-Filing system on November 22, 2019, and thereby served upon all attorneys of record.

/s/ Mark W. Schmitz

# **Exhibit 3**

## **State Court Docket**

11/25/2019

# Johnson County Kansas District Court

**CASE NO 18CV06439 MARKSBERRY vs. FCA US LLC FKA CHRYSLER GROUP LLC ET AL**  
**Div/Judge 7/DAVID W HAUBER**  
**Chapter 60**  
**Nature OTHER TORT (60)**  
**Status PENDING**

11/25/2019 FILE STAMP 11/22/19, PLAINTIFF'S FIRST AMENDED PETITION FOR DAMAGES

11/21/2019 RESCHED. PRE-TRIAL CONFERENCE on 12/16/19,11:30am,Div 7, COURT MOVED PTC

11/13/2019 FILE STAMP 11/11/19, NOTICE OF WITHDRAWAL AND SUBSTITUTION OF COUNSEL

11/12/2019 ELECTRONIC ENTRY OF APPEARANCE BY CRAIG S LAIRD AS A DEFENSE ATTORNEY FOR FCA US LLC FKA CHRYSLER GROUP LLC

11/12/2019 FILE STAMP 11/12/19, JOURNAL ENTRY

11/11/2019 ELECTRONIC ENTRY OF APPEARANCE BY SCOTTIE S KLEYPAS AS A DEFENSE ATTORNEY FOR FCA US LLC FKA CHRYSLER GROUP LLC

10/27/2019 FILE STAMP 10/24/19, CERTIFICATE OF SERVICE

10/27/2019 FILE STAMP 10/24/19, NOTICE OF CANCELLATION OF HEARING

10/27/2019 FILE STAMP 10/24/19, NOTICE OF CANCELLATION OF HEARING

10/25/2019 FILE STAMP 10/23/19, PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO AMENDED PETITION

10/24/2019 <\*\*\*\*\* Bench Notes \*\*\*\*\*>  
APPEARANCES: PLAINTIFF ATTORNEY - MARK SCHMITZ, DEFENDANT ATTORNEY - KEHL FRIESEN. MOTION TO AMEND PETITION GRANTED. (RPTR: MORRISON)(JUDGE: HAUBER)

10/23/2019 FILE STAMP 10/21/19, FCA US LLC'S MOTION TO QUASH DEPOSITION OF FCA'S CORPORATE REPRESENTATIVE AND MOTION FOR PROTECTIVE ORDER

10/23/2019 FILE STAMP 10/21/19, CERTIFICATE OF SERVICE

10/21/2019 FILE STAMP 10/17/19, DEFENDANT LANDERS MCLARTY OLATHE KS, LLC D/B/A OLATHE DODGE CHRYSLER JEEP RAM'S RESPONSE TO PLAINTIFF'S MOTION TO AMENDED PETITION

10/18/2019 FILE STAMP 10/17/19, DEFENDANT FCA US LLC'S SUGGESTIONS IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND PETITION

10/11/2019 FILE STAMP 10/10/19, AMENDED NOTICE OF HEARING

10/11/2019 FILE STAMP 10/10/19, SECOND AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION

10/10/2019 SCHED. MOTION on 10/24/19,02:00pm,Div 7

10/10/2019 CANCELLED CONFERENCE CALL on 10/10/19,11:00am,Div 7, ISSUE RESOLVED..

10/10/2019 SCHED. CONFERENCE CALL on 10/10/19,11:00am,Div 7

10/10/2019 CANCELLED MOTION on 10/10/19,11:00am,Div 7, COUNSEL REQUEST.

10/09/2019 FILE STAMP 10/09/19, FCA US LLC'S MOTION TO QUASH DEPOSITION OF FCA'S CORPORATE REPRESENTATIVE MOTION FOR PROTECTIVE ORDER

11/25/2019

JAND MOTION FOR CONTINUANCE OF HEARING ON FCA US LLC'S  
PREVIOUS FILED MOTION FOR PROTECTIVE ORDER AND SUGGESTIONS IN  
SUPPORT

10/04/2019 SCHED. MOTION on 10/10/19,11:00am,Div 7

10/03/2019 FILE STAMP 10/03/19, NOTICE OF HEARING

10/03/2019 FILE STAMP 10/03/19, DEFENDANT FCA US LLC'S OBJECTIONS TO  
PLAINTIFF'S AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION AND  
MOTION FOR PROTECTIVE ORDER

10/03/2019 FILE STAMP 10/03/19, MOTION TO AMEND PETITION

09/10/2019 FILE STAMP 09/10/19, FIRST AMENDED NOTICE TO TAKE VIDEOTAPED  
DEPOSITION

08/27/2019 FILE STAMP 08/26/19, NOTICE TO TAKE DEPOSITION

07/23/2019 FILE STAMP 07/23/19, AMENDED CASE MANAGEMENT ORDER

07/14/2019 FILE STAMP 07/12/19, CERTIFICATE OF SERVICE

07/10/2019 SCHED. JURY TRIAL on 02/27/20,09:00am,Div 7

07/10/2019 SCHED. JURY TRIAL on 02/26/20,09:00am,Div 7

07/10/2019 SCHED. JURY TRIAL on 02/25/20,09:00am,Div 7

07/10/2019 SCHED. JURY TRIAL on 02/24/20,09:00am,Div 7

07/10/2019 SCHED. FINAL TRIAL CONFERENCE on 02/21/20,09:00am,Div 7

07/10/2019 SCHED. PRE-TRIAL CONFERENCE on 12/13/19,02:30pm,Div 7

07/10/2019 CANCELLED JURY TRIAL 7TH UP on 10/10/19,09:00am,Div 7

07/10/2019 CANCELLED JURY TRIAL 7TH UP on 10/09/19,09:00am,Div 7

07/10/2019 CANCELLED JURY TRIAL 7TH UP on 10/08/19,09:00am,Div 7

07/10/2019 CANCELLED JURY TRIAL 7TH UP on 10/07/19,09:00am,Div 7

07/10/2019 CANCELLED FINAL TRIAL CONFERENCE on 10/04/19,09:00am,Div 7

07/10/2019 CANCELLED PRE-TRIAL CONFERENCE on 09/04/19,10:45am,Div 7

07/10/2019 <\*\*\*\*\* Bench Notes \*\*\*\*\*>  
APPEARANCES BY PHONE: PLAINTIFF ATTORNEY - MARK SCHMITZ,  
BRYCE BELL, DEFENDANT ATTORNEY - CORY BUCK, JOHN BENEVIDES.  
TRIAL CONTINUED TO 2/24/20 AT 9:00, FTC 2/21/20 AT 9:00 AND PTC 13/13/19  
AT 2:30.(JUDGE: HAUBER)

07/10/2019 SCHED. CONFERENCE CALL on 07/10/19,03:00pm,Div 7

07/02/2019 FILE STAMP 07/02/19, ORDER

07/02/2019 FILE STAMP 07/01/19, TRANSCRIPT OF HEARING HAD ON PLAINTIFF'S  
MOTION TO COMPEL DISCOVERY TAKEN ON JUNE 3, 2019 PREPARED BY  
KELLEY M MORRISON

06/30/2019 FILE STAMP 06/28/19, CERTIFICATE OF MAILING/SERVICE

06/30/2019 FILE STAMP 06/28/19, DEFT FCA US LLC'S UNOPPOSED MOTION FOR  
EXTENSION OF TIME TO PRODUCE RESPONSIVE DOCUMENTS AND  
TANGIBLE THINGS

06/26/2019 FILE STAMP 06/26/19, JOURNAL ENTRY (PLAINTIFF'S MOT. TO COMPEL  
DISCOVERY)

06/24/2019 FILE STAMP 06/21/19, DEFENDANTS FCA US LLC AND LANDERS  
MCLARTYOLATHE KS, LLC D/B/A OLATHE DODGE CHRYSTLER JEEP RAM'S  
JOINT DESIGNATION OF REBUTTAL EXPERT WITNESSES

06/21/2019 ELECTRONIC ENTRY OF APPEARANCE BY KEHL D FRIESEN AS A DEFENSE  
ATTORNEY FOR FCA US LLC FKA CHRYSLER GROUP LLC; LANDERS



11/25/2019

Civil CASE HISTORY (ROA)

MCLARTY OLATHE KS; OLATHE DODGE CHRYSLER JEEP

- 06/21/2019 ELECTRONIC ENTRY OF APPEARANCE BY THOMAS E RICE, JR AS A DEFENSE ATTORNEY FOR FCA US LLC FKA CHRYSLER GROUP LLC; LANDERS MCLARTY OLATHE KS; OLATHE DODGE CHRYSLER JEEP
- 06/21/2019 ELECTRONIC ENTRY OF APPEARANCE BY JONATHAN E BENEVIDES AS A DEFENSE ATTORNEY FOR LANDERS MCLARTY OLATHE KS; OLATHE DODGE CHRYSLER JEEP
- 06/14/2019 FILE STAMP 06/13/19, CERTIFICATE OF SERVICE
- 06/12/2019 FILE STAMP 06/12/19, DEFENDANT FCA US LLC'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS COUNT ONE OF PLAINTIFF'S PETITION OR IN THE ALTERNATIVE FOR JUDGMENT ON THE PLEADINGS
- 06/10/2019 FILE STAMP 06/07/19, CERTIFICATE OF SERVICE
- 06/05/2019 FILE STAMP 06/05/19, CERTIFICATE OF SERVICE
- 06/05/2019 FILE STAMP 06/05/19, CERTIFICATE OF SERVICE
- 06/04/2019 FILE STAMP 06/03/19, CERTIFICATE OF MAILING/SERVICE
- 06/03/2019 <\*\*\*\*\* Bench Notes \*\*\*\*\*>  
APPEARANCES: PLAINTIFF ATTORNEY - MARK SCHMITZ, DEFENDANT ATTORNEY - JONATHAN BENEVIDES. COURT GRANTS MOTION TO COMPEL IN PART. PLAINTIFFS COUNSEL TO JOURNALIZE DEFENDANT TO RESPOND WITHIN 21 DAYS.(RPTR: MORRISON)(JUDGE: HAUBER)
- 05/30/2019 FILE STAMP 05/30/19, PLALINTIFF'S REPLY MEMORANDUM IN SUPPORT OF HIS MOTION TO COMPEL DISCOVERY
- 05/30/2019 FILE STAMP 05/30/19, PLAINTIFF'S MEMORNDUM IN OPPOSITION OF DEFENDANT FCA US LLC'S MOTION TO DISMISS COUNT ONE OF PLAINTIFF'S PETITION OR IN THE ALTERNATIVE FOR JUDGMENT ON THE PLEADINGS
- 05/22/2019 FILE STAMP 05/22/19, DEFENDANT FCA US LLC'S MOTION TO DISMISS COUNT ONE OF PLAINTIFF'S PETITION OR IN THE ALTERNATIVE FOR JUDGMENT ON THE PLEADINGS
- 05/02/2019 FILE STAMP 05/02/19, DEFENDANT FCA US, LLC'S MOTION FOR LEAVE TO FILE SECOND AMENDED ANSWER (ORIGINALLY FILED 5/1/19)
- 05/02/2019 FILE STAMP 05/01/19, MEMORANDUM IN SUPPORT OF DEFENDANT FCA US LLC'S MOTION FOR LEAVE TO FILE SECOND AMENDED ANSWER TO PLAINTIFF'S PETITION FOR DAMAGES
- 05/01/2019 FILE STAMP 05/01/19, DEFENDANT FCA US LLC'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY
- 04/19/2019 FILE STAMP 04/19/19, DEFENDANT FCA US LLC'S PRELIMINARY WITNESS AND EXHIBIT LIST
- 04/19/2019 FILE STAMP 04/19/19, NOTICE OF HEARING
- 04/19/2019 SCHED. MOTION TO COMPEL on 06/03/19,02:00pm,Div 7
- 04/19/2019 FILE STAMP 04/18/19, PLAINTIFF'S PRELIMINARY WITNESS AND EXHIBIT LIST
- 04/19/2019 FILE STAMP 04/18/19, CERTIFICATE OF SERVICE
- 04/19/2019 FILE STAMP 04/18/19, PRELIMINARY WITNESS AND EXHIBIT LIST OF OLATHE DODGE CHRYSLER JEEP RAM
- 04/18/2019 FILE STAMP 04/18/19, ENTRY OF APPEARANCE
- 04/18/2019 FILE STAMP 04/17/19, DECLARATION OF MARK W. SCHMITZ
- 04/18/2019 FILE STAMP 04/17/19, MOTION TO COMPEL DISCOVERY

11/25/2019

Civil CASE HISTORY (ROA)

04/17/2019 FILE STAMP 04/16/19, CERTIFICATE OF SERVICE  
04/04/2019 FILE STAMP 04/04/19, CERTIFICATE OF SERVICE  
03/18/2019 FILE STAMP 03/18/19, CASE MANAGEMENT ORDER  
03/05/2019 FILE STAMP 03/04/19, NOTICE OF SERVICE  
03/01/2019 Defense Attorney BUCK, CORY R assigned on 03/01/19  
03/01/2019 Defendant OLATHE DODGE CHRYSLER JEEP added on 03/01/19  
03/01/2019 Defense Attorney AHLBRANDT, THOMAS M assigned on 03/01/19  
02/28/2019 FILE STAMP 02/28/19, ORDER (MOTION FOR LEAVE TO FILE AMENDED ANSWER IS GRANTED)  
02/27/2019 FILE STAMP 02/26/19, NOTICE OF SERVICE  
02/26/2019 FILE STAMP 02/26/19, CERTIFICATE OF SERVICE  
02/25/2019 FILE STAMP 02/25/19, ORDER ADMITTING OUT-OF-STATE ATTORNEY TO PRACTICE (THOMAS AHLBRANDT)  
02/22/2019 FILE STAMP 02/20/19, MOTION FOR ADMISSION PRO HAC VICE (APPLICATION AND OATH ATTACHED)  
02/22/2019 PRO HAC VICE FEE \$100.00; PAID BY CORY R BUCK, RECEIPTED AMOUNT \$100.00, E-PAYMENT NO: 85140285  
02/21/2019 <\*\*\*\*\* Bench Notes \*\*\*\*\*>  
APPEARANCES: PLAINTIFF ATTORNEY - MARK SCHMITZ APPEARS BY PHONE, DEFENDANT ATTORNEY - CORY BUCK, JONATHAN BENEVIDES. CASE MANAGEMENT CONFERENCE HELD ORDER TO BE SUBMITTED BY 3/15/19.(JUDGE: HAUBER)  
02/21/2019 SCHED. JURY TRIAL 7TH UP on 10/10/19,09:00am,Div 7  
02/21/2019 SCHED. JURY TRIAL 7TH UP on 10/09/19,09:00am,Div 7  
02/21/2019 SCHED. JURY TRIAL 7TH UP on 10/08/19,09:00am,Div 7  
02/21/2019 SCHED. JURY TRIAL 7TH UP on 10/07/19,09:00am,Div 7  
02/21/2019 SCHED. FINAL TRIAL CONFERENCE on 10/04/19,09:00am,Div 7  
02/21/2019 SCHED. PRE-TRIAL CONFERENCE on 09/04/19,10:45am,Div 7  
02/19/2019 FILE STAMP 02/15/19, MEMORANDUM IN SUPPORT OF DEFENDANT FCA US LLC'S MOTION FOR LEAVE TO FILE FIRST AMENDED ANSER TO PLAINTIFF'S PETITION FOR DAMAGES  
02/19/2019 FILE STAMP 02/15/19, PLAINTIFF FCA US LLC'S MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER  
01/30/2019 FILE STAMP 01/30/19, ORDER FOR CASE MANAGEMENT CONFERENCE  
01/30/2019 SCHED. CMF on 02/21/19,10:30am,Div 7  
01/15/2019 FILE STAMP 01/14/19, NOTICE OF SERVICE (BY MAIL ON 1/14/19)  
01/03/2019 FILE STAMP 01/02/19, ANSWER OF LANDERS MCLARTY OLATHE KS LLC DBA OLATHE DODGE CHRYSLER JEEP RAM TO PLAINTIFF'S PETITION FOR DAMAGES  
12/20/2018 FILE STAMP 12/20/18, ANSWER OF FCA US LLC TO PLAINTIFF'S PETITION FOR DAMAGES  
12/18/2018 FILE STAMP 12/18/18, CLERKS EXTENSION OF TIME  
12/18/2018 ELECTRONIC ENTRY OF APPEARANCE BY MICHAEL C SKIDGEL AS A DEFENSE ATTORNEY FOR LANDERS MCLARTY OLATHE KS DBA OLATHE DODGE CHRYSLER JEEP RAM  
12/14/2018 FILE STAMP 12/14/18, CERTIFICATE OF SERVICE  
12/14/2018 ELECTRONIC ENTRY OF APPEARANCE BY MARK W SCHMITZ AS A

11/25/2019

## PLAINTIFF ATTORNEY FOR MICHAEL MARKSBERRY

- 12/14/2018 FILE STAMP 12/14/18, CLERK'S EXTENSION OF TIME TO ANSWER OR OTHERWISE PLEAD
- 12/14/2018 ELECTRONIC ENTRY OF APPEARANCE BY JONATHAN E BENEVIDES AS A DEFENSE ATTORNEY FOR FCA US LLC FKA CHRYSLER GROUP LLC
- 11/30/2018 FILE STAMP 11/30/18, PLAINTIFF'S RETURN OF SERVICE UPON DEFENDANT LANDERS MCLARTY OLATHE KS LLC D/B/A OLATHE DODGE CHRYSLER JEEP RAM
- 11/30/2018 FILE STAMP 11/30/18, PLAINTIFF'S RETURN OF SERVICE UPON DEFENDANT FCA US LLC F/K/A CHRYSLER GROUP LLC
- 11/19/2018 PETITION AND SUMMONS ISSUED TO ATTORNEY FOR CERTIFIED MAIL "LANDERS MCLARTY OLATHE KS DBA OLATHE DODGE CHRYSLER JEEP RAM" E/S
- 11/19/2018 PETITION AND SUMMONS ISSUED TO ATTORNEY FOR CERTIFIED MAIL "FCA US LLC FKA CHRYSLER GROUP LLC" E/S
- 11/19/2018 FILE STAMP 11/16/18 03:27pm, REQUEST AND SERVICE INSTRUCTION FORM
- 11/19/2018 FILE STAMP 11/16/18 03:27pm, REQUEST AND SERVICE INSTRUCTION FORM
- 11/19/2018 FILE STAMP 11/16/18, PLAINTIFF'S PETITION FOR DAMAGE
- 11/19/2018 JUDGE DAVID W HAUBER ASSIGNED TO CASE
- 11/19/2018 NEW CASE E-FILED; MARKSBERRY VS FCA US LLC FKA CHRYSLER GROUP LLC; FILING FEE \$196.50; PAID BY BELL, BRYCE B, RECEIPTED AMOUNT \$196.50, E-PAYMENT NO: 83557638

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims FCA US, Kansas Car Dealer Let Consumer's Lifetime Warranty Expire](#)

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