

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

BRYCE BURTON, GIOACCHINO  
DIBENEDETTO, LARRY EASTERLY,  
STEVE FAULKNER, ERIC FISHER,  
EDWARD HALVORSON, JOHN HETHER,  
LLOYD KAY, THOMAS KELLY, JR.,  
THOMAS KOESTER, LOUIS LUCKETT,  
HUMBERTO OCHOA, LANA SELBY  
LANGE THOMAS, EDWARD VIVIAN, and  
JOSEPH WARDLOW,  
on behalf of themselves and all other similarly  
situated,

Plaintiffs,

v.

CHRYSLER GROUP LLC,

Defendant.

C.A. No.: 8:10-cv-00209-JMC

**SECOND AMENDED CLASS  
ACTION COMPLAINT**

**I.  
NATURE OF THE ACTION**

1. Plaintiffs and proposed class representatives, Bryce Burton, Gioacchino DiBenedetto, Larry Easterly, Steve Faulkner, Eric Fisher, Edward Halvorson, John Hether, Lloyd Kay, Thomas Kelly, Jr., Thomas Koester, Louis Lockett, Humberto Ochoa, Lana Selby, Lange Thomas, Edward Vivian, and Joseph Wardlow, individually and on behalf of all other persons similarly situated, bring this action against Defendant Chrysler Group LLC (“Chrysler” or “Defendant”) to recover damages arising from Defendant’s and its corporate predecessors in interest’s breaches of express and implied warranties on Dodge Ram 2500 and 3500 pickup trucks, model years 2007 through 2009, equipped with the 6.7 liter Cummins turbo diesel engine.

2. This action is brought as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of a Class, described more fully below, which includes all persons or entities domiciled or residing in any of the fifty states of the United States of America or in the District of Columbia who purchased at least one new 2007 through 2009 Dodge Ram 2500 or 3500 truck equipped with the 6.7 liter Cummins turbo diesel engine.

3. As designed and manufactured, the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine is inherently and permanently defective because it fails to effectively rid itself of diesel particulates through its regeneration process, causing soot to accumulate in the diesel particulate filter (“DPF”), turbocharger, exhaust gas recirculation (“EGR”) valve, oxygen sensors, and other associated parts. The accumulation of soot triggers the check engine light and requires those parts to be regularly replaced, repaired, or cleaned. The exhaust system occasionally manages to clean itself to the extent necessary to turn off the check engine light off; however, the check engine light turns back on after soot accumulates again as a result of the exhaust system’s inherent and permanent inability to effectively rid itself of diesel particulates through its regeneration process.

4. Defendant or its corporate predecessors in interest issued to Plaintiffs and Class Members a written manufacturer’s warranty that expressly warranted that Defendant or its corporate predecessors in interest would repair, replace, or adjust any item defective in material, workmanship, or factory preparation on 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine. The manufacturer’s warranty also expressly warranted that Defendant or its corporate predecessors in interest would repair or replace defective emission-related parts. The manufacturer’s warranty requires that all parts and

labor needed for repairs, replacement, or adjustment of defective items be free of charge to Plaintiffs and Class Members.

5. Defendant or its corporate predecessors in interest breached those express warranties, as well as the implied warranties of merchantability and fitness for a particular purpose, because the defect in the exhaust system on all 2007 through 2009 Dodge Ram trucks equipped with the 6.7 liter Cummins turbo diesel engine cannot be successfully repaired or otherwise remedied through repairs, replacements, or adjustments of items on those trucks, and because Plaintiffs and Class Members have been deprived of the value of the bargain.

6. Defendant has expressly assumed liability for the obligations of its corporate predecessors in interest for the above-described breach of express and implied warranties.

7. The inherent and permanent defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine significantly diminished the fair market value of those trucks.

8. In addition, Defendant engaged in unfair competition and unfair and deceptive trade practices and acts in violation of state consumer protection statutes by intentionally concealing the common defect in the exhaust system from Plaintiffs and Class Members who purchased new 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine after June 10, 2009, or by failing to warn them about said defect.

## **II. PARTIES**

9. Plaintiff Bryce Burton is a citizen and resident of the State of Missouri, residing in Gallatin, Missouri. Plaintiff Burton purchased a new 2007 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Chandler Auto Mall in Chandler, Oklahoma on June 29, 2007. The Vehicle Identification Number is 3D7MX48A67G800315.

10. Plaintiff Gioacchino DiBenedetto is a citizen and resident of the State of South Carolina, residing in Donalds, South Carolina. Plaintiff Lana Selby is a citizen and resident of the State of South Carolina, residing in Donalds, South Carolina. Plaintiffs DiBenedetto and Selby purchased a new 2007 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Quality Chrysler in Greenwood, South Carolina on December 27, 2007. The Vehicle Identification Number is 3D7MX48A57G830227.

11. Plaintiff Larry Easterly is a citizen and resident of the State of Missouri, residing in Versailles, Missouri. Plaintiff Easterly purchased a new 2009 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Royal Gate Dodge Chrysler Jeep in Ellisville, Missouri on July 22, 2009. The Vehicle Identification Number is 3D7MX48L59G551591.

12. Plaintiff Steve Faulkner is a citizen and resident of the State of Mississippi, residing in Derby, Mississippi. Plaintiff Faulkner purchased a new 2007 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Park's Motors in Augusta, Kansas on September 22, 2007. The Vehicle Identification Number is 3D7MX48A97G777452.

13. Plaintiff Eric Fisher is a citizen and resident of the State of Missouri, residing in Union Star, Missouri. Plaintiff Fisher purchased a new 2008 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Car City in St. Joseph, Missouri on August 8, 2009. The Vehicle Identification Number is 3D7KS28L99G543455.

14. Plaintiff Edward Halvorson is a citizen and resident of the State of Minnesota, residing in Bemidji, Minnesota. Plaintiff Halvorson purchased a new 2007 Dodge Ram 2500 with the 6.7 liter Cummins turbo diesel engine from Bemidji Chrysler in Bemidji, Minnesota on December 21, 2007. The Vehicle Identification Number is 3D3KS29A076829531.

15. Plaintiff John Hether is a citizen and resident of the State of Pennsylvania, residing in West Middlesex, Pennsylvania. Plaintiff Hether purchased a new 2009 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Salem Chrysler Jeep Dodge in Salem, Ohio on September 18, 2009. The Vehicle Identification Number is 3D7MX49L39G535274.

16. Plaintiff Lloyd Kay is a citizen and resident of the State of South Carolina, residing in Belton, South Carolina. Plaintiff Kay purchased a new 2007 Dodge Ram 2500 with the 6.7 liter Cummins turbo diesel engine from McKinney Dodge Chrysler Jeep in Easley, South Carolina on June 15, 2007. The Vehicle Identification Number is 3D7KS28A97G818382.

17. Plaintiff Thomas Kelly, Jr. is a citizen and resident of the State of South Carolina, residing in Duncan, South Carolina. Plaintiff Kelly purchased a new 2008 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Benson Chrysler Dodge Jeep in Greer, South Carolina on February 15, 2008. The Vehicle Identification Number is 3D7KS28A68G141313.

18. Plaintiff Thomas Koester is a citizen and resident of the State of Minnesota, residing in Red Wing, Minnesota. Plaintiff Koester purchased a new 2007 Dodge Ram 2500 with the 6.7 liter Cummins turbo diesel engine from Red Wing Chrysler Dodge Jeep in Red Wing, Minnesota on October 17, 2007. The Vehicle Identification Number is 1D7KS28A37J618080.

19. Plaintiff Louis Luckett is a citizen and resident of the State of Kentucky, residing in Frankfort, Kentucky. Plaintiff Luckett purchased a new 2007 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Bob Allen Chrysler Dodge Jeep in Frankfort, Kentucky on September 12, 2007. The Vehicle Identification Number is 3D7MX48A77G848227.

20. Plaintiff Humberto Ochoa is a citizen and resident of the State of Texas, residing in Dallas, Texas. Plaintiff Ochoa purchased a new 2008 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Randall Noe Chrysler Dodge Jeep in Terrell, Texas on April 29, 2008. The Vehicle Identification Number is 3D7MX49A88G209984.

21. Plaintiff Lange Thomas is a citizen and resident of the State of Texas, residing in Houston, Texas. Plaintiff Thomas purchased a new 2007 Dodge Ram 2500 with the 6.7 liter Cummins turbo diesel engine from Finnegan Chrysler Jeep Dodge in Rosenberg, Texas on October 2, 2007. The Vehicle Identification Number is 3D7KS28A47G845392.

22. Plaintiff Edward Vivian is a citizen and resident of Missouri, residing in Creighton, Missouri. Plaintiff Vivian purchased a new 2009 Dodge Ram 3500 with the 6.7 liter Cummins turbo diesel engine from Lee's Summit Dodge Chrysler Jeep in Lee's Summit, Missouri on June 8, 2009. The Vehicle Identification Number is 3D7MX38L09GS37821.

23. Plaintiff Joseph Wardlow is a citizen and resident of the State of Missouri residing in Jasper, Missouri. Plaintiff Wardlow purchased a new 2007 Dodge Ram 2500 with the 6.7 liter Cummins turbo diesel engine from John Hoffer Dodge Chrysler Jeep in Carthage, Missouri on January 16, 2008. The Vehicle Identification Number is 1D7KS28A77J617918.

24. Defendant Chrysler Group LLC is a limited liability corporation incorporated in the State of Delaware, having its principal place of business at 1000 Chrysler Drive, Auburn Hills, Michigan. Defendant's corporate predecessors in interest are Chrysler LLC (n/k/a Old Carco LLC) and DaimlerChrysler Motors Company LLC. Prior to May 2007, Chrysler LLC was known as DaimlerChrysler Motors Company LLC. On April 30, 2009, Chrysler LLC and certain of its subsidiaries and affiliates (collectively, the "Debtors") filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York.

25. On June 1, 2009, the court entered an order authorizing the sale of substantially all of the Debtors' assets to Defendant (the "Sale Order"), a true and correct copy of which is attached hereto Exhibit A.

26. Paragraph 19 of the Sale Order provides:

Notwithstanding anything else contained herein or in the Purchase Agreement, in connection with the purchase of the Debtors' brands and related Purchased Assets, the Purchaser, from and after the Closing, will recognize, honor and pay liabilities under Lemon Laws for additional repairs, refunds, partial refunds (monetary damages) or replacement of a defective vehicle (including reasonable attorneys' fees, if any, required to be paid under such Lemon Laws and necessarily incurred in obtaining those remedies), and for any regulatory obligations under such Lemon Laws arising now, including but not limited to cases resolved prepetition or in the future, on vehicles manufactured by the Debtors in the five years prior to the Closing (without extending any statute of limitations provided under such Lemon Laws), but in any event not including punitive, exemplary, special, consequential or multiple damages or penalties and not including any claims for personal injury or other consequential damages that may be asserted in relationship to such vehicles under the Lemon Laws. As used herein, "Lemon Law" means a federal or state statute, including, but not limited to, claims under the Magnuson-Moss Warranty Act based on or in conjunction with a state breach of warranty claim, requiring a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty after a reasonable number of attempts as defined in the applicable statute.<sup>1</sup>

27. In Paragraph 19 of the Sale Order, Defendant (i.e., the "Purchaser") assumed the liabilities associated with claims for breach of express warranty and breach of implied warranty for model-year 2007 through 2009 Dodge Ram vehicles equipped with a 6.7 liter Cummins turbo diesel engine, except for those liabilities associated with personal injuries and/or punitive, exemplary, special, consequential, or multiple damages. Defendant's assumption of the

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<sup>1</sup> Sale Order ¶ 19, at pp. 31-32 (Ex. A).

liabilities associated with breach of express warranty claims and breach of implies warranty claims for those vehicles is not dependent on a plaintiff/claimant alleging or proving facts which would meet the standards of any applicable “Lemon Law”.

28. The closing date of the sale was June 10, 2009. In a letter to Senator Richard Durbin dated August 27, 2009, Defendant confirmed that it had assumed liability for breach of warranty claims and lemon law claims:

Today, Chrysler Group has a much better appreciation of the viability of our business than it did on June 10. As a result, we will announce today that the company will accept product liability claims on vehicles manufactured by Old Carco before June 10 that are involved in accidents on or after that date. This is in addition to our previous commitment to honor warranty claims, lemon law claims and safety recalls regarding these vehicles.<sup>2</sup>

29. Accordingly, Defendant Chrysler Group LLC, Chrysler LLC, and DaimlerChrysler Motors Company LLC shall hereinafter be referred to collectively as “Defendant.”

30. At all relevant times, Defendant’s dealerships were its agents for motor vehicle repairs and warranty issues because they performed repairs, replacements, and adjustments covered by Defendant’s manufacturer’s warranty.

### **III. JURISDICTION & VENUE**

31. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy in this civil action exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and this is a class action in which Class Members are citizens of states other than Delaware and Michigan, where Defendant is incorporated and has its principal

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<sup>2</sup> Ltr. from Chrysler Group to Senator Richard Durbin, Aug. 27, 2009, *available at* <http://www.safetyresearch.net/Library/ChryslerLetterDurbin.pdf>, a true and correct copy of which is attached hereto as Exhibit B.



place of business, respectively, and the Class consists of more than one hundred members.

32. This Court also has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

33. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant resides in this district and a substantial part of the events or omissions giving rise to the claims herein occurred within this District, including Defendant's breaches of express and implied warranties for 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

34. Defendant resides in this District for purposes of 28 U.S.C. § 1391 because it is subject to general personal jurisdiction in this District. Defendant has continuous and systematic contacts with South Carolina, including this District, through selling vehicles in South Carolina to South Carolina residents, including residents of this District. Defendant is also subject to specific personal jurisdiction in this District because its contacts with this District gave rise to the instant action.

35. Venue is also proper in this Court because Plaintiff Kelly is a citizen of South Carolina who purchased a 2008 Dodge Ram 2500 truck equipped with the 6.7 liter Cummins turbo diesel engine in Greenville County, South Carolina, and he resides in Spartanburg County, South Carolina; Plaintiff Kay is a citizen of South Carolina who resides and purchased a 2007 Dodge Ram 2500 truck equipped with the 6.7 liter Cummins turbo diesel engine in Anderson County, South Carolina; and proposed Class Members include citizens of South Carolina who reside in this District.

**IV.  
FACTUAL ALLEGATIONS**

36. Defendant develops, manufactures, distributes, and sells a wide range of automotive products, including passenger cars, light trucks, and heavy trucks. As such, Defendant deals in automobiles and holds itself out as having knowledge and skill in the design and manufacture of automobiles.

37. Defendant manufactures Dodge Ram 2500 and 3500 trucks and offers them for sale through its dealerships across the United States. At all relevant times, Defendant designed, manufactured, tested, warranted, advertised, distributed, and sold 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

38. In January 2007, Defendant introduced Dodge Ram 2500 and 3500 trucks equipped with the new 6.7 liter Cummins turbo diesel engine. All 2007 through 2009 Dodge Ram trucks equipped with the 6.7 liter Cummins turbo diesel engine were also equipped with the new Bluetec emissions-reduction system with Cummins filters and systems.

39. The 2007 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine were the first Bluetec vehicles from the Chrysler Group of DaimlerChrysler Motors Company LLC, and they were the first trucks to meet the United States Environmental Protection Agency's 2010 diesel emissions standards and 2010 truck emissions standards in all 50 states.

40. Defendant claimed that 2007 Dodge Ram trucks equipped with the 6.7 liter Cummins turbo diesel engine had fuel savings of 20 to 40 percent and up to a 90 percent reduction in nitrogen oxides due largely to an adsorber catalyst. Then Chrysler President and Chief Executive Officer, Tom LaSorda proclaimed that the "The Dodge Ram Heavy Duty pickup

truck with the new 6.7-liter Cummins turbo diesel engine is the cleanest diesel truck available on the market.”

41. The 2007 Dodge Ram trucks equipped with the 6.7 liter Cummins turbo diesel engine and Bluetec emissions-reduction system began appearing in United States dealerships in March 2007.

42. In 2007, the price of Dodge Ram trucks on which the 6.7 liter Cummins turbo diesel engine was standard increased by \$495, and the 6.7 liter Cummins turbo diesel engine option was \$6,100 on other Dodge Ram 2500 and 3500 trucks. An “Ultra Clean Diesel System” charge of \$995 was also added as a separate line item on the factory sticker for all 2007 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

43. Within the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine is a self-cleaning DPF and an oxidation catalyst that are intended to reduce diesel particulate matter by a factor of 10. The exhaust system is supposed to clean itself through a regeneration process.

44. As designed and manufactured, the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine is inherently and permanently defective because it fails to effectively rid itself of diesel particulates, causing soot to accumulate in the DPF, turbocharger, EGR valve, oxygen sensors, and other associated parts.

45. The accumulation of soot in the DPF, turbocharger, EGR valve, oxygen sensors, and other associated parts triggers the check engine light and requires those parts to be regularly repaired, replaced, or cleaned. The exhaust system occasionally manages to clean itself through the regeneration process, causing the check engine light to turn off until soot accumulates once

again due to the exhaust system's inherent and permanent inability to effectively rid itself of diesel particulates.

46. Defendant did not adequately research, design, test, and/or manufacture 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine before warranting, advertising, promoting, marketing, and selling them as suitable and appropriate for their intended and foreseeable use.

47. Due to its inherent and permanent nature, the common exhaust system defect exists, and has always existed, in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine purchased by Plaintiffs and the Class Members. The exhaust system defect has manifested itself and caused problems in all of those vehicles, including the inability to start, engine stalling, loss of power, the turbo charger not engaging or otherwise malfunctioning, the transmission not downshifting, plugged exhaust system, poor fuel economy, and triggering of the check engine light.

48. Due to its inherent and permanent nature, the common exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine cannot be successfully repaired or otherwise remedied through repairs, replacements, or adjustments of items on those trucks.

49. Defendant issued to all original purchasers, including Plaintiffs and Class Members, a written manufacturer's warranty that expressly warranted that Defendant would repair, replace, or adjust all items defective in material, workmanship, or factory preparation on their 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine. The only items not covered by the basic warranty are headphones, tires, and items added or changed after the trucks left the manufacturing plant. The manufacturer's

warranty also expressly warranted that Defendant would repair or replace defective emission-related parts. The manufacturer's warranty requires that all parts and labor for such repairs, replacements, and adjustments be free of charge.

50. Due to the defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, Plaintiffs and Class Members have had to take their trucks to Defendant's dealerships for repairs, replacements, and adjustments on numerous occasions after the defect caused soot to accumulate in the DPF, turbocharger, EGR valve, oxygen sensors, and/or associated parts and triggered the check engine light.

51. Each time they took their vehicles to one of Defendant's dealerships, Plaintiffs and Class Members informed Defendant's dealerships' employees about the problems caused by the exhaust system defect in their 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine. By doing so, Plaintiffs and Class Members notified Defendant that the transactions consisting of their purchases of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine were still troublesome.

52. Despite Defendant's repeated attempts to repair, replace, and adjust items within or associated with the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine during their warranty period, those trucks remain defective in that their exhaust systems still do not effectively rid themselves of diesel particulates, causing soot to accumulate in the DPF, turbocharger, EGR valve, oxygen sensors, and/or associated parts and triggering the check engine light.

53. Defendant breached its express warranty because it is unable to successfully

repair or otherwise remedy the inherent and permanent defect in the exhaust systems of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, and because Plaintiffs and Class Members have been deprived of the value of the bargain.

54. Upon information and belief, Defendant has extended emission warranties in recognition of the inherent and permanent exhaust system defect described above.

55. Upon information and belief, in recognition of the inherent and permanent exhaust system defect described above, Defendant, through its dealerships, has repeatedly told original purchasers of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, after their purchase of those trucks, to change their driving habits by driving with the exhaust brake, or “jake” brake, on, driving very hard on the highway, and avoiding idle time, which is difficult to do in traffic, on job site, and in off road use, in order to improve the effectiveness of the exhaust system. However, a change in driving habits does not remedy the inherent and permanent exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

56. Due to its inherent and permanent nature, the common defect described above will require Plaintiffs and Class Members to expend significant sums of money after their warranties expire to repair, replace, and/or adjust the DPF, turbocharger, EGR valve, oxygen sensors, and other associated parts on their 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

57. The inherent and permanent defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine significantly diminished their fair market value.

58. Upon information and belief, Defendant has, and at all relevant times has had, actual knowledge of the inherent and permanent defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine from thousands of warranty claims related to the exhaust system defect as well as other information in Defendant's possession.

59. Upon information and belief, Defendant advertised, promoted, marketed, warranted, distributed, and sold through the stream of commerce 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine that to Plaintiffs and the Class Members that Defendant knew or reasonably should have known were defective and would not perform in accordance with Plaintiffs' and Class Members' reasonable expectations that their trucks would not contain an inherent and permanent defect and that the their trucks would be suitable and appropriate for their intended and foreseeable use.

60. Defendant failed to advise Plaintiffs and Class Members that 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine contained the exhaust system defect, and Plaintiffs and Class Members had no reason to know of the defect prior to purchasing their trucks.

61. Plaintiffs and Class Members could not have discovered the defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine through any reasonable inspection of the vehicles before purchase.

62. Plaintiffs and Class Members were without access to the information concealed by Defendant regarding the inherent and permanent defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, and they therefore reasonably relied on Defendant's warranties regarding the quality, durability,

and other material characteristics of their trucks. Had Plaintiffs and Class Members known of the permanent and inherent defect in the exhaust system, they would either have paid less for their 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine than the amounts they actually paid, or they would not have purchased said trucks.

63. Defendant's knowledge of the defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine gave Defendant more than adequate opportunity to successfully repair or otherwise remedy the defect, which Defendant has failed to do as a result of the defect's inherent and permanent nature.

64. Upon information and belief, Defendant has intentionally concealed the inherent and permanent nature of the defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine from Plaintiffs, Class Members, and others.

65. By concealing the inherent and permanent nature of the defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, Defendant has forced Plaintiffs and Class Members to bear the financial loss associated with the diminished fair market value of their trucks.

66. Any applicable statutes of limitations have been tolled by Defendant's knowing and active concealment of, or knowing failure to warn about, material facts as alleged herein. With respect to Defendant's omissions, Plaintiffs and Class Members could not reasonably have discovered the inherent and permanent exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine prior to purchase.



Accordingly, Defendant is estopped from relying on any statute of limitations to defeat any of Plaintiffs' or Class Members' claims.

**V.  
CLASS ACTION ALLEGATIONS**

67. Pursuant to Rules 23(b) and (c) of the Federal Rules of Civil Procedure, Plaintiffs bring this action on their own behalf and on behalf of the proposed Class. Plaintiffs seek certification a Class that consists of:

- (a) all persons or entities domiciled or residing in any of the fifty states of the United States of America or in the District of Columbia who purchased at least one new Dodge Ram 2500 or 3500 truck equipped with the 6.7 liter Cummins turbo diesel engine, model years 2007 through 2009; and
- (b) a subclass of all persons or entities domiciled or residing in any of the fifty states of the United States of America or in the District of Columbia who purchased at least one new 2007 Dodge Ram 2500 truck equipped with the 6.7 liter Cummins turbo diesel engine;
- (c) a subclass of all person or entities domiciled or residing in any of the fifty states of the United States of America or in the District of Columbia who purchased at least one new 2007 Dodge Ram 3500 truck equipped with the 6.7 liter Cummins turbo diesel engine;
- (d) a subclass of all person or entities domiciled or residing in any of the fifty states of the United States of America or in the District of Columbia who purchased at least one new 2008 Dodge Ram 2500 truck equipped with the 6.7 liter Cummins turbo diesel engine;
- (e) a subclass of all person or entities domiciled or residing in any of the fifty states of the United States of America or in the District of Columbia who purchased at least one new 2008 Dodge Ram 3500 truck equipped with the 6.7 liter Cummins turbo diesel engine;
- (f) a subclass of all person or entities domiciled or residing in any of the fifty states of the United States of America or in the District of Columbia who purchased at least one new 2009 Dodge Ram 2500 truck equipped with the 6.7 liter Cummins turbo diesel engine;
- (g) a subclass of all person or entities domiciled or residing in any of the fifty states of the United States of America or in the District of Columbia who purchased at least one new 2009 Dodge Ram 3500 truck equipped with the 6.7

liter Cummins turbo diesel engine;

- (h) a subclass of all persons or entities domiciled or residing in Arkansas, California, Colorado, Connecticut, Kansas, Missouri, New Jersey, New Mexico, New York, Ohio, Vermont, or Washington who purchased at least one new 2009 Dodge Ram 2500 or 3500 truck equipped with the 6.7 liter Cummins turbo diesel engine after June 10, 2009 (the “Consumer Protection Subclass”); and
- (i) excluded from the Class are: (a) Defendant Chrysler Group LLC, any entity in which it has a controlling interest, its legal representatives, officers, directors, assigns and successors, and any other entity related to or affiliated with Defendant Chrysler Group LLC; and (b) all claims for personal injury, wrongful death, or any incidental or consequential damages over and above those sought herein, except as authorized by law.

68. Plaintiffs and Class Members assert the causes of action in Counts I-III;

69. Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass also assert the cause of action in Count IV;

70. The Class is comprised of tens of thousands of purchasers of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine throughout the United States, making joinder impracticable. The exact number of Class Members is unknown, but their identity can be ascertained through Defendant’s records. The disposition of the numerous claims of these Class Members in a single class action will provide substantial benefits to all parties and to the Court.

71. There is a well-defined community of interest in the questions of law and fact involved affecting the Class Members. The questions of law and fact common to the Class predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

- (a) whether the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine purchased by Plaintiffs and the Class is inherently and permanently

defective in that it fails to effectively clean itself through its regeneration process;

- (b) whether Defendant knew of the inherent and permanent defect in the exhaust system of 2007 through 2009 Dodge Ram 1500 trucks equipped with the 6.7 liter Cummins turbo diesel engine;
- (c) whether Defendant had a duty to Plaintiff and the Class to disclose the defective nature of the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine;
- (d) whether the facts concealed and/or otherwise not disclosed by Defendant to Plaintiffs and the Class are material facts;
- (e) whether, as a result of Defendant's concealment and/or failure to disclose material facts, Plaintiffs and Class Members acted to their detriment by purchasing vehicles containing the common defect described above;
- (f) whether Defendant knew or should have known that 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine are inherently and permanently defective and, thus, that those vehicles are not suitable for the purposes for which they are intended to be used, and otherwise are not as warranted and represented by Defendant;
- (g) whether 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine are not as advertised and/or promoted by Defendant;
- (h) whether Defendant expressly warranted to original purchasers of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine that Defendant would repair, replace, or adjust all items on those trucks defective in material, workmanship, or factory preparation;
- (i) whether Defendant expressly warranted to original purchasers of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine that Defendant would repair or replace all defective emission-related parts on those trucks;
- (j) whether Defendant breached its express warranties because Defendant is unable to successfully repair or otherwise remedy the inherent and permanent defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine purchased by Plaintiffs and Class Members;

- (k) whether Defendant breached its express warranties because Plaintiffs and Class Members have been deprived of the value of the bargain;
- (l) whether Defendant impliedly warranted to original purchasers of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine that those trucks were merchantable;
- (m) whether Defendant breached its implied warranty of merchantability by selling Plaintiffs and Class Members 2007 through 2009 Dodge Ram 2500 and 3500 trucks with an inherent and permanent exhaust system defect;
- (n) whether Defendant impliedly warranted to original purchasers of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine that those trucks were fit for a particular purpose;
- (o) whether Defendant breached its implied warranty of fitness for a particular purpose by selling Plaintiffs and Class Members 2007 through 2009 Dodge Ram 2500 and 3500 trucks with an inherent and permanent exhaust system defect; and
- (p) whether Plaintiffs and Class Members are entitled to compensatory damages for the diminution in the fair market value of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine as a result of the common defect described above, and the amount of such damages.

72. Plaintiffs assert claims that are typical of the Class, having purchased 2007 through 2009 Dodge Ram 2500 or 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine that contain exhaust systems with the common defect described above. Plaintiffs and Class Members have similarly suffered harm arising from Defendant's breaches of express and implied warranties.

73. Injuries sustained by Plaintiffs and Class Members flow, in each instance, from a common nucleus of operative facts—Defendant's breach of express and implied warranties as a result of the common defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

74. Plaintiffs are adequate representatives of the Class because their interests do not conflict with and are not antagonistic to the interests of the Class Members they seek to represent. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained attorneys who are competent and experienced in the prosecution of class litigation.

75. Plaintiff and Class Members have all suffered and will continue to suffer substantial harm and damages due to Defendant's breaches of express and implied warranties. A class action is superior to other methods for the fair and efficient adjudication of the subject controversy. Absent a class action, most Class Members likely will find the cost of litigating their individual claims to be prohibitive, and will have no effective remedy at all. Because of the relatively small size of the individual Class Members' claims, few Class Members likely could afford to seek legal redress on their own. Absent a class action, Class Members will continue to sustain damages, and Defendant's misconduct will proceed without remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication. Additionally, Defendant has acted, and failed to act, on grounds generally applicable to Plaintiffs and the Class, requiring Court imposition of uniform relief to insure compatible standards of conduct toward Plaintiffs and the Class.

76. Notice can be provided to original purchasers of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine at Defendant's expense via internet publication and through the U.S. postal service.

**VI.  
CAUSES OF ACTION**

**COUNT I – BREACH OF EXPRESS WARRANTY**

77. Plaintiffs reallege and incorporate by reference each preceding paragraph as if fully set forth herein.

78. Through a written manufacturer's warranty, Defendant expressly warranted to Plaintiffs and Class Members that it would repair, replace, or adjust items defective in material, workmanship, or factory preparation on 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7-liter Cummins turbo diesel engine. The manufacturer's warranty also expressly warranted that Defendant would repair or replace defective emission-related parts.

79. Defendant breached those express warranties because it is unable to successfully repair or otherwise remedy the common defect in the exhaust systems of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

80. Defendant also breached those express warranties because Plaintiffs and Class Members have been deprived of the value of the bargain with respect to 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

81. The warranty remedy of repair or replacement has failed of its essential purpose because, although Defendant has been given a reasonable chance to repair or otherwise remedy the common defect described above, all 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine still fail to function properly in that their exhaust systems do not effectively rid themselves of diesel particulates, causing soot to accumulate in the DPF, turbocharger, EGR valve, oxygen sensors, and other associated parts. The accumulation of soot causes those parts to be regularly repaired, replaced, or cleaned and triggers the check engine light.

82. Defendant's efforts to repair or otherwise remedy the common defect in the exhaust systems of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine through repairs, replacements, and adjustments have failed because the defect is inherent and permanent.

83. As alleged above, Defendant actually knew of and intentionally concealed the defective nature of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine from Plaintiffs and Class Members. At the very least, Defendant should have known of the defective nature of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, and Defendant failed to warn Plaintiffs and Class Members about the common defect in the exhaust system of said trucks.

84. Plaintiffs and Class Members notified Defendant of the above breach of express warranty within a reasonable amount of time after Plaintiffs and Class Members discovered, or should have discovered, such breach by taking their trucks to Defendant's dealerships for repairs when the check engine light turned on or some other problem resulted from the common defect in the exhaust system.

85. When Defendant made the express warranty described above, Defendant knew the purpose for which 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine were to be used, and warranted them to be in all respects safe and proper for that purpose.

86. As a direct and proximate result of Defendant's breach of express warranty, Plaintiffs and Class Members have suffered actual damages in the form of substantial diminution in the fair market value of their 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped

with the 6.7 liter Cummins turbo diesel engine when they purchased the vehicles. By diminution in fair market value, Plaintiffs mean the difference between the value of the vehicles when they were purchased and the value that the vehicles would have had at that time if they had been as warranted. The diminution in fair market value would not have occurred but for the inherent and permanent exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

87. In addition, Plaintiffs and Class Members have sustained and/or will sustain other damages, including repair costs, as a direct and proximate result of the inherent and permanent exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

88. Plaintiffs, on behalf of themselves and for all others similarly situated, demand judgment against Defendant for damages in an amount to be determined at trial, together with reasonable attorney's fees.

**COUNT II – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

89. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

90. Defendant is a merchant with respect to vehicles such as 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

91. As a merchant with respect to vehicles, Defendant impliedly warranted to Plaintiffs and Class Members that 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine sold to Plaintiffs and Class Members were merchantable, including that they passed without objection in the trade and were fit for the ordinary purposes for which such goods are used.



92. Due to their undisclosed defective nature, new 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine were unmerchantable when sold to Plaintiffs and Class Members because they could not pass without objection in the trade and were unfit for the ordinary purposes for which such goods are used.

93. Defendant breached the implied warranty of merchantability with respect to new 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine by selling unmerchantable trucks to Plaintiffs and Class Members.

94. As alleged above, Defendant actually knew of and intentionally concealed the defective nature of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine from Plaintiffs and Class Members. At the very least, Defendant should have known of the defective nature of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, and Defendant failed to warn Plaintiffs and Class Members about the common defect in the exhaust system of said trucks.

95. Plaintiffs and Class Members notified Defendant of the above breach of the implied warranty of merchantability within a reasonable amount of time after Plaintiffs and Class Members discovered, or should have discovered, such breach by taking their trucks to Defendant's dealerships for repairs when the check engine light turned on or some other problem resulted from the common defect in the exhaust system.

96. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiffs and Class Members have suffered actual damages in the form of substantial diminution in the fair market value of their 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine. By diminution in fair

market value, Plaintiffs mean the difference between the value of the vehicles when they were purchased and the value that the vehicles would have had at that time if they had been as warranted. The diminution in fair market value would not have occurred but for the inherent and permanent exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

97. In addition, Plaintiffs and Class Members have sustained and/or will sustain other damages, including repair costs, as a direct and proximate result of the inherent and permanent exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

98. Plaintiffs, on behalf of themselves and for all others similarly situated, demand judgment against Defendant for damages for in an amount to be determined at trial, together with reasonable attorney's fees.

**COUNT III – BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

99. Plaintiffs reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

100. Defendant, at the time of the sale of new 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine to Plaintiffs and Class Members, knew and had reason to know of the particular purpose for which the trucks were required.

101. Defendant also knew and had reason to know at the time of sale that Plaintiffs and Class Members were relying on Defendant's skill or judgment to design, manufacture, and furnish suitable trucks.

102. Defendant breached the implied warranty of fitness for a particular purpose with respect to new 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine because those trucks were not fit for the particular purpose for which they were required due to their inherent and permanent exhaust system defect.

103. As alleged above, Defendant actually knew of and intentionally concealed the defective nature of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine. At the very least, Defendant should have known of the defective nature of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, and Defendant failed to warn Plaintiffs and Class Members about the common defect in the exhaust system of said trucks.

104. Plaintiffs and Class Members notified Defendant of the above breach of the implied warranty of fitness for a particular purpose within a reasonable amount of time after Plaintiffs and Class Members discovered, or should have discovered, such breach by taking their trucks to Defendant's dealerships for repairs when the check engine light turned on or some other problem resulted from the common defect in the exhaust system.

105. As a direct and proximate result of Defendant's breach of the implied warranty of fitness for a particular purpose, Plaintiffs and Class Members have suffered actual damages in the form of substantial diminution in the fair market value of their 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine. By diminution in fair market value, Plaintiffs mean the difference between the value of the vehicles when they were purchased and the value that the vehicles would have had at that time if they had been as warranted. The diminution in fair market value would not have occurred but for the inherent and permanent exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500

trucks equipped with the 6.7 liter Cummins turbo diesel engine.

106. In addition, Plaintiffs and Class Members have sustained and/or will sustain other damages, including repair costs, as a direct and proximate result of the inherent and permanent exhaust system defect in 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

107. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendant for damages in an amount to be determined at trial, together with reasonable attorney's fees.

**COUNT IV – VIOLATION OF CONSUMER PROTECTION STATUTES**

108. Plaintiffs Easterly and Fisher reallege and incorporate by reference each preceding paragraph as though fully set forth herein.

109. The cause of action set forth in this Count is based on the acts and omissions of Defendant Chrysler Group LLC, and is not based on assumed liabilities.

110. Defendant's advertising, marketing, distribution, and sales of 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, as well as its servicing of those trucks after sale, constitute conduct and activities in the course of trade and commerce.

111. Since June 11, 2009, Defendant has engaged in unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below by advertising, marketing, distributing, and selling 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine to Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass without informing them of the common defect in the exhaust systems of those trucks.

112. As alleged above, Defendant had, and still has, superior knowledge of the inherent and permanent defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, and intentionally concealed the permanent and inherent defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine from Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass in order to induce them into purchasing one or more of said trucks.

113. At the very least, Defendant should have known of the defective nature of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, yet Defendant failed to warn Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass about the common defect in the exhaust system of said trucks. Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass did not know, and had no reason to know, of the defect prior to purchasing their trucks.

114. Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass could not have discovered the defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine through any reasonable inspection of the vehicles before purchase.

115. Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass were without access to the information concealed by Defendant regarding the inherent and permanent defect in the exhaust system of 2007 through 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, and they therefore reasonably relied on Defendant's warranties regarding the quality, durability, and other material characteristics of their trucks at the time of sale and Defendant's ability to repair, replace, or adjust items on their

trucks that are defective in material, workmanship, or factory preparation.

116. Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass also reasonably relied on Defendant to disclose, and not conceal or fail to warn of, material information about 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

117. Defendant's intentional concealment of the defect in the exhaust system of 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine from Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below. Alternatively, Defendant's failure to warn Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass about the defect in the exhaust system of 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine constitutes unfair competition and unfair, unconscionable, deceptive, and fraudulent trade practices and acts in violation of the state consumer protection statutes listed below.

118. Defendant also violated the state consumer protection statutes listed below by selling 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine to Plaintiff Easterly and Fisher and Members of the Consumer Protection Subclass when Defendant knew or should have known that the inherent and permanent defect in the exhaust system of those trucks cannot be remedied by repairing, replacing, or adjusting parts within or associated with the exhaust system.

119. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ark. Code § 4-88-101, *et seq.*

120. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts and has made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*

121. Defendant has engaged in unfair competition and unfair and deceptive trade practices and action and has made false representations in violation of Cal. Bus. & Prof. Code § 17200, *et seq.* and Cal. Bus. & Prof. Code § 17500, *et seq.*

122. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Conn. Gen. Stat. § 42-110b, *et seq.*

123. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Kan. Stat. § 50-623, *et seq.*

124. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Vernon's Missouri Stat. § 407.010, *et seq.*

125. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*

126. Defendant has engaged in unfair competition and unfair and deceptive trade a practices and acts in violation of N.M. Stat. § 57-12-1, *et seq.*

127. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

128. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts in violation of Ohio Rev. Stat. § 1345.01, *et seq.*

129. Defendant has engaged in unfair competition and unfair and deceptive trade practices and acts in violation of 9 Vt. § 2451, *et seq.*

130. Defendant has engaged in unfair competition and unfair and deceptive trade

practices and acts in violation of Wash. Rev. Code. § 19.86.010, *et seq.*

131. Defendant's unfair competition and unfair and deceptive trade practices and acts have directly, foreseeably, and proximately caused damages and injury to Plaintiff Easterly and Fisher and Members of the Consumer Protection Subclass in the form of significant diminution in the fair market value of their 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine. By diminution in fair market value, Plaintiffs mean the difference between the value of the vehicles when they were purchased and the value that the vehicles would have had at that time if they had been as warranted. The diminution in fair market value would not have occurred but for the inherent and permanent exhaust system defect in 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

132. In addition, Plaintiffs and Members of the Consumer Protection Subclass have sustained and/or will sustain other damages, including repair costs, as a direct and proximate result of the inherent and permanent exhaust system defect in 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine.

133. Plaintiffs and Members of the Consumer Protection Subclass have also sustained and/or will sustain indirect damages, including loss of revenue or profits, as a proximate result of the inherent and permanent exhaust system defect in 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, including lost revenue or profits.

134. Had Plaintiffs Easterly and Fisher and Members of the Consumer Protection Subclass known of the inherent and permanent defect in the exhaust system of 2009 Dodge Ram 2500 and 3500 trucks equipped with the 6.7 liter Cummins turbo diesel engine, they would have



paid less for their trucks than the amounts they actually paid, or they would not have purchased those trucks.

135. Plaintiffs Easterly and Fisher, on behalf of themselves and all others similarly situated, demand judgment against Defendant for damages, and any other damages authorized by the above listed state consumer protection statutes, in an amount to be determined at trial, together with reasonable attorney's fees.

**VII.  
DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

- An order certifying this matter as a class action with Plaintiffs as Class representatives and Plaintiffs Easterly and Fisher as representatives of the Consumer Protection Subclass, and designating Plaintiffs' counsel as Class Counsel and Subclass Counsel;
- Judgment in favor of Plaintiffs and the Class on Counts I, II, and III;
- Judgment in favor of Plaintiffs Easterly and Fisher and the Consumer Protection Subclass on Count IV;
- Pre-judgment and post judgment interest on such monetary relief;
- An award of reasonable attorney's fees and costs of Plaintiffs and the Class;  
and
- Such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Respectfully submitted,

By: /s/ John B. White, Jr.  
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May 27, 2011

Greenville, South Carolina