CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000872-172

(Class Action)
SUPERIOR COURT

M. DESHAIES

Petitioner

-vs.-

FCA CANADA INC., legal person duly constituted having a principal establishment at One Riverside Drive West, City of Windsor, Province of Ontario, N9A 5K3

and

FCA US LLC, legal person duly constituted having its head office at 1000 Chrysler Drive, City of Auburn Hills, State of Michigan, 48326, U.S.A.

and

CUMMINS EASTERN CANADA LP, legal person duly constituted having a principal establishment at 7200 Autoroute Félix-Leclerc, City of Pointe-Claire, Province of Quebec, H9R 1C2

and

35601 CUMMINS CANADA ULC, legal person duly constituted having its head office at 900-1959 Upper Water Street, City of Halifax, Province of Nova Scotia, B3J 2X2

and

CUMMINS INC., legal person duly constituted having its head office at 500 Jackson Street, City of Columbus, State of Indiana, 47201, U.S.A.

Respondents

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION & TO APPOINT THE PETITIONER AS REPRESENTATIVE (Art. 574 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which it is a member, namely:

    - All persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the model year 2013 through 2017 Dodge Ram 2500 and/or 3500 vehicles with a Cummins 6.7-litre diesel engine (collectively, the "Vehicles" and the "Cummins Engines"), or any other group to be determined by the Court;

2. The Vehicles were designed, manufactured, tested, distributed, delivered, supplied, tested, inspected, marketed, leased and/or sold and warranted with a defectively-designed selective catalytic converter (SCR) system (hereinafter, the "Design Defect"). The SCR system in the Vehicles is plagued by serious and pervasive design and manufacturing defects that render the Cummins Engines and thus, the Vehicles containing the Cummins Engines, unmerchantable, unreliable and unsuitable for use;

3. This action arises from the Respondents' knowledge that the SCR system designed into the Cummins Engines has an inherent Design Defect that causes repeated failures, and their failure to disclose to, and active concealment from, the Petitioner and Class members, of that material fact. The action also arises from the Respondents' failure to properly repair the Design Defect as required by the Respondents' express and implied warranties;

4. The Vehicles could not function as required nor as represented under all operating conditions, on a consistent and reliable basis, even after repeated repairs and replacements. These repeated repairs and replacements failed to repair or to correct the Cummins Engines in any lasting way;

5. In addition, the Petitioner contends that the Respondents failed to disclose, despite longstanding knowledge, that the SCR system is defective in that it is

predisposed to break downs, that it emits emissions in excess of federal environmental standards, and that its diesel particulate filter (DPF) becomes clogged with soot, to which the Vehicles are programmed to go into regeneration mode, thereby burning more fuel in order to clear the filter;

6. Class Members who have their truck serviced at the dealerships have their Power Control Modules (PCMs) "flashed," or reprogrammed, to burn even more fuel in an attempt to burn off the soot and often, they are not told that they are having their system flashed, either before or after the dealership works on their truck. The effect of the "flashing" is that the system runs hotter than before, thereby damaging the DPF and all exhaust and engine components. After the flashing, the Vehicles' fuel economy is substantially reduced, resulting in significantly increased out-of-pocket expenses;

7. The Respondents actively concealed the Design Defect from the Class and the fact that its existence would diminish both the intrinsic and the resale value of the Vehicles;

8. Further, the Design Defect rendered the Cummins Engines unreasonably dangerous in that it could lead to sudden breakdowns, forcing the Vehicles to attempt emergency manoeuvres, such as pulling over to the side of the road;

9. By reason of this unlawful conduct, the Petitioner and members of the Class have suffered material and moral damages (which is further detailed herein), upon which they are entitled to claim;

B) <u>The Respondents</u>

(i) <u>The FCA (Chrysler) Respondents</u>

10. Respondent FCA Canada Inc. (hereinafter, "FCA Canada") is a Canadian corporation with its head office in Windsor, Ontario. It is the current owner of *inter alia* the following trade-marks: "CHRYSLER AND BAND WITHIN SHIELD DESIGN" (NFLD1502), which was registered on July 4, 1927, "DODGE" (UCA29065), which was registered on January 8, 1948, "CHRYSLER" (TMDA56220), which was registered on January 24, 1933, the whole as appears from a copy of an extract from the *Registraire des entreprises*, produced herein *en liasse* as **Exhibit R-1**;

11. Respondent FCA US LLC (hereinafter, "FCA US") is an American corporation with its head office in Michigan. It is the current owner of *inter alia* the following trade-marks: "CHRYSLER IMPERIAL AND SHIELD DESIGN" (NFLD1799), which was registered on August 12, 1930, "DODGE & RAM'S HEAD DESIGN" (TMA748793), which was registered on September 28, 2009, "RAM" (TMA128585), which was registered on November 2, 1962, and "RAM"S HEAD DESIGN" (TMA675408), which was registered on October 20, 2006, the whole

as appears more fully from a copy of said trade-marks from the CIPO website, produced herein *en liasse* as **Exhibit R-2**;

12. Respondents FCA Canada and FCA US (collectively, "FCA") are motor vehicle manufacturers and licensed distributors of Chrysler, Dodge, Jeep and Ram motor vehicles. The Chrysler brand is one of the "Big Three" in the United States Automotive Industry[1]. As of 2015, FCA is the 7th largest automaker in the world by unit production;

13. FCA, either directly or through a wholly-owned subsidiary, agent or affiliate, designed, manufactured, imported/exported, distributed, supplied, tested, inspected, marketed, promoted, advertised, maintained, leased and/or sold and warranted the Vehicles containing the Cummins Engines;

(ii) <u>The Cummins Respondents</u>

14. Respondent Cummins Eastern Canada LP (hereinafter "Cummins Eastern Canada") is a Canadian corporation with its head office in Pointe-Claire, Quebec, the whole as appears from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-3**;

15. Respondent 35601 Cummins Canada ULC (hereinafter "Cummins Canada") is a Canadian corporation with its head office in Halifax, Nova Scotia the whole as appears from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-4**;

16. Respondent Cummins Inc. is an American corporation with its head office in Columbus, Indiana. It is the current owner of *inter alia* the following trade-marks: "C CUMMINS DESIGN" (TMA231623), which was registered on January 26, 1979 and "CUMMINS" (TMA299999), which was registered on February 15, 1985, the whole as appears more fully from a copy of said trade-marks from the CIPO website, produced herein *en liasse* as **Exhibit R-5**;

17. Respondents Cummins Eastern Canada, Cummins Canada, and Cummins Inc. (collectively, "Cummins") are a Fortune 500 company that designs, manufactures, imports/exports, distributes, supplies, tests, and inspects engines, filtration, and power generation products.

18. Cummins designed, manufactured, imported/exported, distributed, supplied, tested, and inspected the Cummins Engines and, in particular, the exhaust emission control, the SCR, to be free of defects in material and workmanship;

(iii) <u>The FCA Litigation</u>

[1] When used in relation to the United States automotive industry, the "Big Three" most generally refers to the three major American automotive companies: Respondent FCA US LLC, non-party Ford Motor Company, and non-party General Motors Corporation.

19. Respondents FCA US and Cummins Inc. are involved in litigation against each other relating to the Design Defect affecting the Vehicles and with regards to who is responsible to pay for the recall of the Vehicles in *FCA US LLC* v. *Cummins Inc.*, No. 2:16-cv-12883-AC-SDD (E.D. Mich.) (the "FCA Litigation"), the whole as appears more fully from a copy of the Complaint and Jury Demand dated August 5, 2016, from a copy of Cummins Inc.'s Motion for Temporary Retraining Order and Preliminary Injunction dated September 20, 2016, from a copy of the Verified Answer, Affirmative Defenses, Counterclaim and Jury Demand dated September 20, 2016, and from a copy of the Transcript of the Hearing on Motion for Temporary Restraining Order and Preliminary Injunction dated September 21, 2016, produced herein *en liasse* as **Exhibit R-6**;

(iv) Solidary Liability

20. FCA and Cummins have worked together for decades. They have described their relationship as "the most formidable partnership in the working world", the whole as appears more fully from a copy of the 2012 Dodge Ram Heavy Duty brochure, produced herein as **Exhibit R-7**;

21. FCA and Cummins are intimately familiar with each other's business, and they know each other's strengths and weaknesses, their challenges in selling trucks that meet federal requirements, and the technological problems that they have had to overcome;

22. Given the close ties between the FCA and Cummins Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other;

C. The Situation

(a) Diesel Engines

23. A diesel engine is an internal combustion engine in which ignition of fuel is initiated by the high temperature which a gas achieves when it is greatly compressed. In contrast, a regular spark-ignition engine such as a gasoline engine, which ignites fuel using spark plugs;

24. Instead of using a spark plug to combust highly-refined fuel with short hydrocarbon chains (as gasoline engines do), diesel engines compress a mist of liquid fuel and air to very high temperatures and pressures, which causes the diesel to spontaneously combust. This causes a more powerful compression of the pistons, which produces greater engine torque (that is, more power). The diesel engine is able to do this both because it operates at a higher compression ratio than a gasoline engine and because diesel fuel contains more energy than gasoline does;

25. Diesel engines first became popular in North American passenger vehicles in the 1970s and 1980s, but gained a reputation as “dirty” because of their emissions; they emitted noxious gases and particulate matter. As diesel engines need to be more robust than gasoline engines, diesel-powered vehicles also cost more to produce – commanding a premium price. These factors, combined with increasingly stringent emissions regulations caused diesel passenger vehicles to become increasingly unpopular in the market;

26. Diesel engines pose a particularly difficult challenge to the environment because they have an inherent compromise between power, fuel efficiency, and emissions – the greater the power and fuel efficiency, the “dirtier” and more harmful the emissions become. Compared to gasoline engines, diesel engines generally produce greater power, better drivability, and much higher fuel efficiency. But these benefits come at the cost of much more harmful emissions than gasoline vehicles;

27. Because of the potential for considerable environmental pollution, the diesel engine market is one characterized by stringent governmental regulations regarding allowable pollutants, including exhaust emissions levels of oxides of Nitrogen (“NO_x”), Non-Methane Hydrocarbons (“NMHC”), Non-Methane Hydrocarbon Equivalent, Carbon Monoxide and Particulate Matter (hereinafter the “Harmful Emissions”);

28. One important by-product of a diesel combustion engine is NO_x, which is comprised of nitrogen and oxygen atoms. These compounds are formed in the cylinder of the engine during the high temperature combustion process. NO_x pollution contributes to nitrogen dioxide, particulate matter in the air, and reacts with sunlight in the atmosphere to form ozone;

29. NOx is a generic term for the mono-nitrogen oxides NO and NO2 (nitric oxide and nitrogen dioxide), which are predominantly produced from the reaction of nitrogen and oxygen gases in the combustion cylinder during combustion. NO_x is produced by the burning of all fossil fuels, but is particularly difficult to control from the burning of diesel fuel in lean-burn conditions (which is the case for nearly all modern on-road diesel engines);

30. NO_x are a highly reactive group of gases that Environment Canada and other government agencies have found to create environmental problems and public health hazards, including smog, ground-level ozone, and acid rain. For example, direct exposure to NO_x can cause respiratory problems, such as lung irritation, bronchitis, or pneumonia. When NO_x combines with sunlight, it may create photochemical smog, which appears as a brownish ground-level haze and causes chest pains, shortness of breath, coughing and wheezing, and eye irritation. NO_x is one of the main ingredients involved in the formation of ground-level ozone. Breathing ozone can also trigger a variety of health problems

including chest pain, coughing, throat irritation, and congestion and can worsen bronchitis, emphysema, and asthma. Children are at the greatest risk of experiencing negative health impacts from exposure to ozone. When mixed with rain in the atmosphere, NO_x can create nitric acid or acid rain. NO_x is also a contributor to global warming;

31. According to Environment Canada:

> Nitrogen oxides include the gases nitrogen oxide (NO) and nitrogen dioxide (NO_2). NOx is formed primarily from the liberation of nitrogen contained in fuel and nitrogen contained in combustion air during combustion processes. NO emitted during combustion quickly oxidizes to NO_2 in the atmosphere. NO_2 dissolves in water vapour in the air to form acids, and interacts with other gases and particles in the air to form particles known as nitrates and other products that may be harmful to people and their environment.
>
> Both NO2 in its untransformed state, and the acid and nitrate transformation products of NO_2, can have adverse effects on human health or the environment. NO_2 itself can cause adverse effects on respiratory systems of humans and animals, and damage to vegetation. When dissolved by water vapour, the acids formed can have adverse effects on the respiratory systems of humans and animals. Nitric acid (HNO_3) can cause damage to vegetation, buildings and materials, and contribute to acidification of aquatic and terrestrial ecosystems. When NO_2 is transformed into nitrate particles that are subsequently deposited on aquatic and terrestrial ecosystems, acidification can result. When nitrate is combined with other compounds in the atmosphere, such as ammonia, it becomes an important contributor to the secondary formation of respirable particulate matter ($PM_{2.5}$). NO_2 is one of the two primary contributing pollutants, along with volatile organic compounds (VOCs), to the formation of ground-level ozone. Both ozone and PM2.5 is known to have harmful effects on human health and the environment.

The whole as appears more fully from a copy of an extract from Environment Canada's website at www.ec.gc.ca, produced herein as **Exhibit R-8**;

32. According to Health Canada:

> PM and NOx emissions are the main concerns associated with diesel engines because of their association with health impacts and their relatively high emission levels compared with spark ignition gasoline engines.

In addition, a detailed review of the scientific literature with the objective of identifying and characterizing the human health effects associated with exposure

to emissions from diesel engines revealed that there is evidence of a causal relationship between diesel exhaust exposure and:

- Lung cancer and bladder cancer,
- Adverse respiratory health outcomes,
- Adverse cardiovascular health outcomes,
- Immunological effects,
- Reproductive and developmental effects, and
- Central nervous system effects,

The whole as appears more fully from a copy of Health Canada's Human Health Risk Assessment for Diesel Exhaust report dated March 2016, produced herein as **Exhibit R-9**;

33. In June 2012, the World Health Organization declared that diesel vehicle emissions were carcinogenic to humans (Group 1), which is about as dangerous as asbestos, the whole as appears more fully from a copy of International Agency for Research on Cancer (WHO) Press Release entitled "IARC: Diesel Engine Exhaust Carcinogenic" dated June 12, 2012 and from a copy of the Toronto Star article entitled "Diesel exhaust as cancerous as asbestos, says WHO" dated June 13, 2012, produced herein *en liasse* as **Exhibit R-10**;

34. The International Journal of Environmental Research and Public Health published an article that quantified the health and economic impacts of extra NO_x emissions attributable to non-compliant vehicles in the U.S. as the following: 5 to 50 premature deaths, 687 to 17,526 work days with restricted activity, and economic costs of $43,479,189 to $423,268,502, the whole as appears more fully from a copy of the International Journal of Environmental Research and Public Health article entitled "Public Health Impact and Economic Costs of Volkswagen's Lack of Compliance with the United States' Emission Standards" dated September 8, 2016, produced herein as **Exhibit R-11**;

(b) <u>The Emissions Situation</u>

35. In Canada, emissions from motor vehicles are regulated by Environment Canada under the *Canadian Environmental Protection Act, 1999* ("CUS EPA"), which applies to new vehicles imported into Canada or to vehicles shipped inter-provincially, as well as to used vehicles imported into Canada;

36. The general approach to setting vehicle emissions standards in Canada is to harmonize them with the federal United States Environmental Protection Agency ("US EPA") standards as much as possible because of the integrated North American market for vehicles, engines, and fuels (Exhibit R-9);

37. In December 2000, the US EPA announced a new program for reducing heavy-duty diesel truck exhaust emissions. Details of this new program were set out in a regulatory announcement issued by the US EPA, which included the following:

> We are finalizing a PM [particulate matter] emissions standard for new heavy-duty engines of 0.01 grams per brake-horsepower-hour (g/bhp-hr), to take full effect for diesels in the 2007 model year. We are also finalizing standards for NOx and non-methane hydrocarbons (NMHC) of 0.20 g/bhp-hr and 0.14 g/bhp-hr, respectively. These NOx and NMHC standards will be phased in together between 2007 and 2010, for diesel engines. The phase-in will be on a percent-of-sales basis: 50 percent from 2007 to 2009 and 100 percent in 2010.

The whole as appears more fully from a copy of the US EPA Regulatory Announcement entitled "Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements" dated December 2000, produced herein as **Exhibit R-12**;

38. On January 18, 2001, the US EPA issued its *Final Rule-Control of Air Pollution from Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements* (hereinafter the "Final Rule" or the "US EPA Emission Standard") which states:

> "We are establishing a comprehensive national control program that will regulate the heavy-duty vehicle and its fuel as a single system. As a part of this program, new emission standards will begin to take effect in model year 2007, and will apply to heavy-duty highway engines and vehicles. These standards are based upon the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, we are also reducing the level of sulfur in highway diesel fuel significantly by mid-2006"[2],

The whole as appears more fully from a copy of the Final Rule 40 CFR Parts 69, 80, and 86 entitled "Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements" dated January 18, 2001, produced herein as **Exhibit R-13**;

39. The new US EPA Emissions Standard mandated a 90% reduction in NO_x and Particulate Matter (PM) emissions between 2004 and 2010;

40. The US EPA promulgated these standards in 2001, intended to be in full effect by 2010, so as to "provide engine manufacturers with the lead time needed to effectively phase-in the exhaust emissions control technology that will be used to achieve the emission benefits of the new standards" (Exhibit R-13);

[2] Exhibit R-13 at page 5002.

41. The US EPA Emissions Standard regulated both diesel vehicle/ engine emissions standards and diesel fuel standards simultaneously, as a single system (Exhibit R-13):

> "These options will ensure that there is widespread availability and supply of low sulfur diesel fuel from the very beginning of the program, and will provide engine manufacturers with the lead time needed to efficiently phase-in the exhaust emissions technology that will be used to achieve the emissions benefits of the new standards"[3];

42. On January 1, 2004, Environment Canada enacted the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2 (hereinafter the "Canadian On-Road Vehicle and Engine Emission Regulations"), the purpose of which was to reduce emissions and to "establish emission standards and test procedures for on-road vehicles that are aligned with those of the US EPA" for "vehicles and engines that are manufactured in Canada, or imported into Canada, on or after January 1, 2004"[4]. Every model of vehicle or engine that is certified by the US EPA and that is sold concurrently in Canada and in the United States, is required to meet the same emission standards in Canada as in the United States, the whole as appears more fully from a copy of the DieselNet article entitled "Emission Standards: Canada" revision dated April 2012, produced herein as **Exhibit R-14**;

43. The US EPA Emissions Standard sets not-to-exceed standards for Harmful Emissions and the Canadian *On-Road Vehicle and Engine Emission Regulations* mirror these standards;

44. More specifically, the CEPA emission standards strictly regulate exhaust emissions, including oxides of nitrogen (NOx). This effectively banned the sale of diesel passenger vehicles in Canada because the nature of diesel engines inherently makes NOx emissions a particularly difficult problem to resolve;

45. The Final Rule (Exhibit R-13) contemplated exhaust emission control necessary for compliance with the emission standards to be a "complete emission control system" integrated with on-board diagnostics to detect and identify malfunctions in all monitored emission-related engine systems:

> "The Complete System: We expect that the technologies described above would be integrated into a complete emission control system as described in the final RIA. The engine-out emissions will be balanced with the exhaust emission control package in such a way that the results are the most beneficial from a cost, fuel, economy, emissions standpoint.
> …

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[3] *Ibid.*
[4] *Canadian On-Road Vehicle and Engine Emission Regulations*; ss. 2 & 3.

> The manufacturers are expected to take a system approach to the problem of optimizing the engine and exhaust control systems to realize the best overall performance possible."[5]

46. "Reliability" of the exhaust emission control system is defined in the Final Rule as "the expectation that emission control technologies must continue to function as required under all operating conditions for the life of the vehicle"[6];

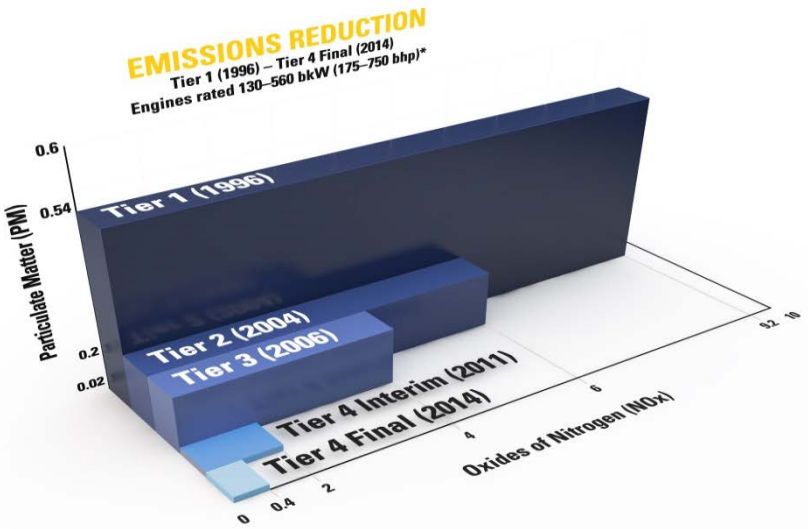
47. Reliability and durability criteria for the emissions controls under the US EPA Standard required that "[t]o ensure that no manufacturer underdesigns their absorbers or traps (compared to the level of durability that is achievable), we are requiring that these technologies be designed to last for the full useful life or the engine. More specifically the final regulations state that scheduled replacement of the PM filter element, NOx absorber, or other catalyst module bed is not allowed during the useful life, unless the manufacturer can show that the replacement will in fact occur and pays for the replacement. Otherwise only cleaning and adjustment will be allowed as scheduled maintenance";

48. The US EPA Emissions Standard set the not-to-exceed limits for NO_x at 0.20 grams per brake-horsepower-hour (g/bhp-hr). The not to exceed NO_x standard of 0.20g/bhp-hr was to be phased-in between January 1, 2007 and December 31, 2009: "The NOx and NMHC standards will be phased-in together between 2007 and 2010, for diesel engines. The phase-in will be on a percentage-of-sales basis: 50 percent from 2007 to 2009 and 100 percent in 2010", the whole as appears more fully from a copy of the US EPA Highway Diesel Progress Review Report 2, dated March 2004, produced herein as **Exhibit R-15**;

			Phase-In by Model Year			
		Standard (g/bhp-hr)	2007	2008	2009	2010
Diesel	NOx	0.20	50%	50%	50%	100%
	NMHC	0.14				
	PM	0.01	100%	100%	100%	100%

49. As is depicted below, the US EPA ultimately organized a four-tiered system with exhaust emission requirements becoming progressively stricter. By the end of 2014, the Tier 4 Final was to take effect, drastically reducing allowable exhaust emissions;

[5] Exhibit R-13 at pages and 5054-5055 and 5090.
[6] *Id.*, at page 5056.



50. In February 2013, Environment Canada adopted the *Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations*, SOR/2013-24, establishing mandatory greenhouse gas emission standards (including NO_x), which are harmonized with the U.S. US EPA Phase 1 regulations. These regulations apply to heavy-duty vehicles of the 2014 and later model years;

(c) <u>The Industry's Response to the Emissions Regulations</u>

51. Seeing a major opportunity for growth, almost all of the major automobile manufacturers rushed to develop "clean diesel" and promoted new diesel vehicles as environmentally friendly and clean. For example, Volkswagen, Mercedes, GM, FCA, and others began selling diesel cars and trucks as more powerful, yet also as an environmentally friendly alternative to gasoline vehicles. Cummins also moved aggressively to capture the diesel engine market by developing engines that purported to meet federal regulations;

52. On September 18, 2015, the "Volkswagen Emissions Scandal" erupted, when the US EPA issued a notice of violation of the Clean Air Act to the Volkswagen Group after it was discovered that Volkswagen had intentionally programmed turbocharged direct injection (TDI) diesel engines to activate certain emissions controls only during laboratory emissions testing. The programming caused the vehicles' NO_x output to meet environmental standards during regulatory testing, but to emit up to 40 times more NO_x in real-world driving. Volkswagen deployed this programming in about eleven million cars worldwide, during model years 2009 through 2015, the whole as appears more fully from a copy of the U.S. EPA Notice of Violation dated September 18, 2015, produced herein as **Exhibit R-16**;

53. A defeat device, as defined by the US EPA, is any apparatus that unduly reduces the effectiveness of emissions control systems under conditions a vehicle may reasonably be expected to experience. The US EPA found that the Volkswagen/Audi defeat device allowed the vehicles to pass emissions testing

while in the real world these vehicles polluted far in excess of emissions standards;

54. In September 2015 and again in November 2015, Volkswagen admitted using defeat device software to activate emissions controls when diesel cars were being smog tested and deactivate those controls during normal, on-road driving. Volkswagen pled guilty to criminal charges and settled civil class actions for over ten billion dollars", the whole as appears from a copy of the Forbes article entitled "Audi Admits 2.1 Million Vehicles Are Also Fitted With Emissions Cheat Software" dated September 28, 2015, from a copy of the Financial Times article entitled "VW admits second illegal device in 85,000 Audi engines" dated November 23, 2015, and from a copy of the USA Today article entitled "Volkswagen emission scandal widens: 11 million cars affected" dated September 22, 2015, produced herein *en liasse* as **Exhibit R-17**;

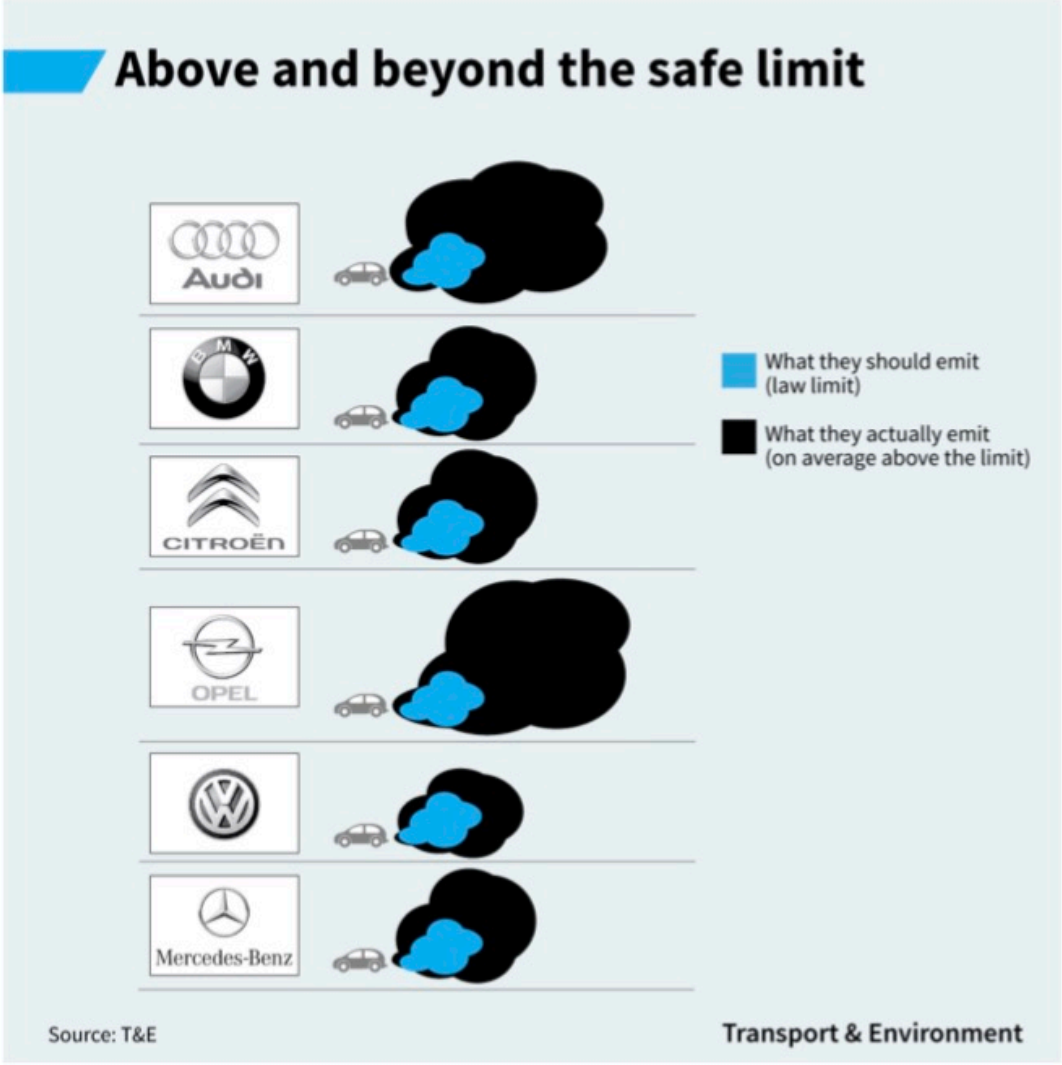
55. In May 2015, a study conducted on behalf of the Dutch Ministry of Infrastructure and the Environment found that all sixteen vehicles made by a variety of manufacturers, when tested, emitted significantly more NO_x on real world trips while they passed laboratory tests. The report concluded that "It is remarkable that the NOx emission under real-world conditions exceeds the type approval value by a factor of eight. It demonstrates that the settings of the engine, the EGR and the SCR during a real-world test trip are such that they do not result in low NOx emissions in practice. In other words: *In most circumstances arising in normal situations on the road, the systems scarcely succeed in any effective reduction of NOx emissions*" (emphasis added), the whole as appears more fully from a copy of the TNO Report entitled "Detailed investigations and real-world emission performance of Euro 6 diesel passenger cars" dated May 18, 2015, produced herein as **Exhibit R-18**;

56. Other organizations are beginning to take notice of the emissions deception. The Transportation and Environment (T&E) organization, a European group aimed at promoting sustainable transportation, compiled data from respected testing authorities around Europe. T&E stated in September 2015 that real-world emissions testing showed drastic differences from laboratory tests such that models tested emitted more pollutants on the road than in their laboratory tests. "For virtually every new model that comes onto the market the gap between test and real-world performance leaps," the report asserts, the whole as appears more fully from a copy of the Transport & Environment article entitled "VW's cheating is just the tip of the iceberg" dated September 21, 2015, produced herein as **Exhibit R-19**;

57. In a summary report, T&E graphically depicted the widespread failure of most manufacturers as follows:

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

In tests by the ICCT[1] 12 out of 13 modern diesel cars failed to achieve the Euro 6 limit in on the road. The worst vehicle, an Audi, emitted 22 times the allowed limit. Emissions are highest in urban areas where most people are exposed to the pollution. On average a new diesel car emits **over** 800mg/km of nitrogen oxides driving in town compared to the limit of 80mg/km. Data obtained on around 20 modern diesel cars by T&E shows every major manufacturer is selling cars that fail to meet Euro 6 limits on the road. A minority of vehicles do meet the limits – but most don't. This is because the industry uses cheaper less effective exhaust treatment systems or fails to configure the best systems in a way that minimizes emissions. The cost of a modern diesel after treatment system is just €300.



The whole as appears more fully from a copy of the Transport & Environment brief entitled "Five facts about diesel the car industry would rather not tell you" dated September 2015, produced herein as **Exhibit R-20**;

58. The T&E report (Exhibit R-20) found that the current system for testing cars in a laboratory produces “meaningless results”;

59. Emissions Analytics, a U.K. company which was formed to “understand the differences in emissions and fuel economy between the laboratory test and real-world driving conditions”, after conducting on-road emissions testing, explained the following:

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

The whole as appears more fully from a copy of an extract from Emissions Analytics’ website at www.abvwc.com, produced herein as **Exhibit R-21**;

60. The US EPA as well as other government agencies began to look for defeat devices in other vehicles that were actually exceeding emissions standards. It was revealed that dozens of vehicle models were affected and on January 12, 2017, the US EPA issued a Notice of Violation to FCA because it had cheated on its emissions certificates with respect to its Dodge Ram and Jeep Grand Cherokee vehicles. On May 23, 2017, the United States filed a civil suit against Fiat Chrysler alleging violations of the *Clean Air Act* and compelling them to fix the problem. FCA had allegedly failed to disclose and/or justify thee defeat devices, the whole as appears more fully from a copy of the US EPA Notice of Violation dated January 12, 2017 and from a copy of the U.S. Complaint (2:17-cv-11633-JCO-EAS) dated May 23, 2017, produced herein *en liasse* as **Exhibit R-22**;

61. “Once again,” said California Air Resources Board (CARB) Chair Mary D. Nichols about FCA’s cheating, “a major automaker made the business decision to skirt the rules and got caught”, the whole as appears more fully from a copy of the US EPA News Release entitled “EPA Notifies Fiat Chrysler of Clean Air Act Violations” dated January 12, 2017, produced herein as **Exhibit R-23**;

62. Separately, a putative class of truck owners have sued FCA and Cummins in Canada for falsely marketing and selling model year 2007–2012 trucks (2500s and 3500s) with 6.7-litre Cummins diesel engines as the “strongest, cleanest, quietest diesel engine in its class,” when in fact those trucks emitted pollutants far in excess of applicable federal and state requirements, and beyond the expectations of a reasonable consumer. The SCR system at issue in this case is a new technology in the diesel engines that was not used in the 2007–2012 vehicles, the whole as appears more fully from a copy of the Ontario Notice of Action in *Isovski* v. *FCA Canada Inc., FCA US LLC, Cummins Eastern Canada*

LP, and Cummins Inc., court file no.: cv-16-56483200CP, dated November 25, 2016, produced herein as **Exhibit R-24**;

63. Thus, the Design Defect is part of a long-running saga involving efforts by auto and engine companies to meet (and evade) the US EPA's emissions requirements;

(d) <u>Emissions Credits – the Dirty Secret</u>

64. Under US EPA regulations, engine manufacturers can earn emissions credits equal to their emissions limit, less the amount of emissions produced by the engines. An engine manufacturer may average, bank, and trade these emissions credits. To "average" credits means the engine manufacturer can use its emissions credits from one engine model and apply it to another engine model effectively allowing the "clean" engine to pay for the dirty engine. Banking credits allows an engine manufacturer to save their emissions credits for future years. In some cases, engine manufacturers can use their credits retrospectively, to offset previous engines that exceeded their emissions levels. Finally, engine manufacturers can even trade and/or sell these emissions credits, either privately or on the open market, the whole as appears more fully from a copy of an extract from the US EPA website at <u>www.epa.gov</u> and from a copy of extracts from Code of Federal Regulations Title 40 – Protection of Environment, produced herein *en liasse* as **Exhibit R-25**;

65. According to the US EPA, this emissions credit trading system was designed to offer "flexibility for individual emissions sources to tailor their compliance path to their needs" and "incentive[s] for early pollution reductions as a result of the ability to bank surplus allowances." The US EPA states that "[u]nder the right circumstances, emissions trading programs have proven to be extremely effective. They can achieve substantial reductions in pollution while providing accountability and transparency…" (Exhibit R-25);

66. Falsely claiming to obtain reduced emission levels undermines this system. By using fraudulently obtained emissions credits for dirty engines, it increases the pollutants in the air and shifts the cost of emissions compliance from the owners of vehicles with dirty engines to the owners of vehicles with clean engines. According to the TruckTrend website:

> Dodge made a decisive move to head off 2010 emissions regulations at the pass. By increasing the [Cummins 6.7L engine], the company was able to meet the upcoming 2010 standards early. This allowed Chrysler to build up EPA emissions credits that could be used during future model years. During the later part of the '07 model year, GM introduced the 6.6L Duramax LMM engine, which made 365 hp and 660 lb-ft, even with the addition of a DPF.

The whole as appears more fully from a copy of the Truck Trend article entitled "A Decade of Cummins, Duramax, and Power Stroke Diesel Engines" dated June 15, 2015, produced herein as **Exhibit R-26**;

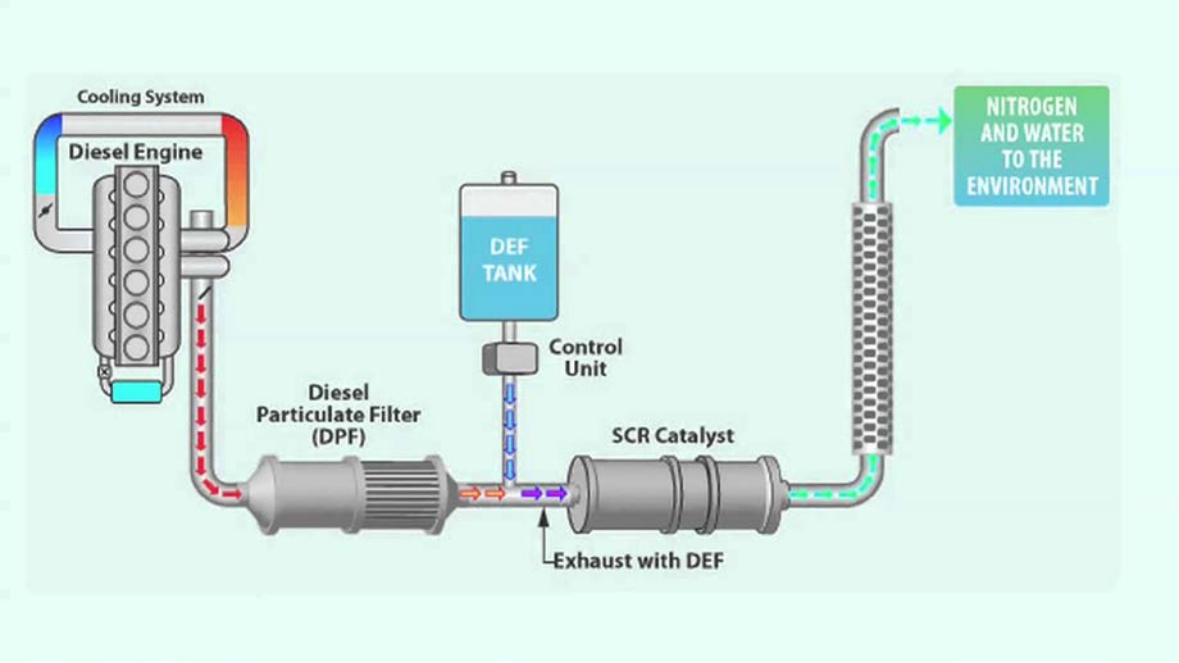
67. The partnership between the Respondents enabled Cummins, who had banked emissions credits, to use these credits on dirtier engines and to share them with FCA. This allowed the Respondent to design and to build dirty trucks, effectively shifting the cost to the purchasers and/or lessees of the Vehicles;

(e) <u>The Respondents' SCR Emission Control System</u>

68. The Respondents made the business decision to design, manufacture, import/export, distribute, supply, test, inspect, market, promote, advertise, maintain, lease and/or sell and warrant the Vehicles and/or the Cummins Engines as an emissions solution for the North American vehicle industry and they represented the Cummins Engines as being capable of reducing air pollutants in order to meet the 2010 phased-in US EPA Emission Standard;

69. The primary emission control after-treatment technologies include a DPF and the SCR. The DPF traps and removes particulate (soot) emissions, while the SCR facilitates the capture and reduction of NO_x into less harmful substances, such as nitrogen and oxygen;

The SCR System



70. But the SCR system, as the Respondents acknowledged for certain trucks in the FCA Litigation, does not work as intended and emits pollutants that exceed EPA

and California limits. According to Cummins' own testing, the emissions exceed applicable limits by 50%, the whole as appears more fully from a copy of Exhibit 2 to FCA's Response in Opposition to Cummins' Motion for TRO and Preliminary Injunction in the FCA Litigation, produced herein as **Exhibit R-27**;

71. When the emissions system shuts down or stops functioning, the Vehicles receive a warning that they are about to go into "limp mode," which requires them to reach a dealership within a specified mileage range, regardless of where they are in the country. The risk that the Vehicles will suddenly limp along on the highway can have significant, real-world consequences for Vehicle drivers. The following is an example of a warning the Vehicles display before going into limp mode:

(f) <u>Cummins – A Timeline</u>

72. Cummins has been manufacturing diesel engines since 1919 and it has a long history with Dodge, having supplied diesel engines for the manufacturer since 1988, the whole as appears more fully from a copy of an extract from Cummins' website at https://cumminsengines.com and from a copy of the Cummins News Release entitled "Cummins Reveals Best-In-Class 2007 Turbo Diesel Engine" dated January 23, 2007, produced herein *en liasse* as **Exhibit R-28**;

73. In 1990, the US EPA amended its air pollution standards under the Clean Air Act, which addressed diesel emissions. At this point, Canada was already harmonizing its engine and vehicle emission standard with that of the US EPA (Exhibit R-9), the whole as appears more fully from a copy of an extract from the DieselNet website at www.dieselnet.com, produced herein as **Exhibit R-29**;

74. In 1998, the United States Department of Justice (the "US DOJ"), on behalf of the US EPA, sued every diesel manufacturer in the United States, including Cummins, for installing "defeat" devices on their engines. The companies were forced to spend a combined one billion dollars, including an $83.4 million civil penalty, to bring their engines into conformity with national standards, the whole as appears more fully from a copy of the US DOJ Press Release entitled "Justice Department Sues Mack Truck Inc. under Clean Air Act" dated June 16, 1998, from a copy of the Jalopnik article entitled "How The EPA Won $1 Billion From Diesel Cheaters Long Before VW" dated September 21, 2015, and from a copy of an extract from the US DOJ website at www.justice.gov, produced herein *en liasse* as **Exhibit R-30**;

75. However, Cummins continued to unabatedly ship out engines without pollution control equipment through 2006, for which it would pay an additional $2.1 million settlement with the Department of Justice in 2010, the whole as appears more fully from a copy of the US DOJ Press Release entitled "Cummins Inc. Agrees to Pay $2.1 Million Penalty for Diesel Engine Clean Air Act Violations" dated February 22, 2010, produced herein as **Exhibit R-31**;

76. After the issuance of the Final Rule (Exhibit R-13), Cummins began developing its own clean diesel technology. Between 2002 and 2007, Cummins increased its research & development budget by 60 percent, to $321 million, with almost a quarter dedicated to meeting the new emission standards. More specifically, it expanded its component segment budget, which included emissions-related technologies, from $39 million in 2004 to $57 million in 2006. The emphasis was on developing its own system based on its own proprietary parts, the whole as appears more fully from a copy of the Fortune 500 article entitled "Cummins: An Engine Maker Bets on Clean Air—and Wins" dated June 8, 2015, produced herein as **Exhibit R-32**;

77. In September 2006, Cummins unveiled its 6.7-litre Turbo Diesel engine, the whole as appears more fully from a copy of the PR Newswire Press Release entitled "Dodge Introduces Cleaner, Quieter and More Powerful 6.7-liter

Cummins Turbo-Diesel Engine at State Fair of Texas" dated September 28, 2006, produced herein as **Exhibit R-33**;

78. By 2015, in addition to its engines, Cummins controlled 41% of the U.S. market on aftermarket diesel cleaning technologies (Exhibit R-32). It is the leading diesel engine manufacturer in the United States and one of the biggest in the world (Exhibit R-32);

(g) <u>The Respondents' Representations</u>

79. Cummins and FCA aggressively promoted the Vehicles and emphasized the strength of their relationship. From 2007 to 2016, they have jointly worked on eight separate emissions-related recalls of the 2500 and 3500 trucks (Exhibit R-6);

80. Despite the Respondents' knowledge of the Design Defect, they failed to inform the Petitioner and the Class and they represented that the Cummins Engines were free of defects; were fit for heavy-duty trucking, and that any problems experienced with the Cummins Engines could and would be repaired by an authorized service center;

81. Even with knowledge that the Vehicles failed to meet the federal requirements, both FCA and Cummins continued to advertise and represent that the trucks were compliant. For the 2013 trucks –the very same trucks that they have admitted violate US EPA standards– FCA to this day continues to market them as follows: "For 2013, Cummins improves the classic Turbo Diesel in Ram Heavy Duty models with a Next-Generation Diesel Exhaust Fluid (DEF)/Select Catalytic Reduction (SCR) system that's fully compliant with recent federal mandates." In its 2013 owner's manual, FCA continues to state that "[t]he Cummins® diesel engine meets all EPA Heavy Duty Diesel Engine Emissions Standards, resulting in the lowest emitting diesel engine ever produced", the whole as appears more fully from a copy of the 2013 Ram 2500/3500 brochure and from a copy of the 2013 Ram Owner's manual, produced herein *en liasse* as **Exhibit R-34**;

82. Even today, the manuals for the 2014 to 2017 Vehicles continue to represent that "[t]he Cummins® diesel engine meets all EPA Heavy Duty Diesel Engine Emissions Standards, resulting in one of the lowest emitting diesel engines ever produced", the whole as appears more fully from a copy of the 2014, 2015, 2016, and 2017 RAM Owner's Manual Diesel Supplements, produced herein *en liasse* as **Exhibit R-35**;

83. Cummins also has consistently advertised the trucks and their engines as fully compliant with environmental regulations. To this day, Cummins still advertises the Cummins Engines in the Vehicles as follows:

> Working closely to integrate with Ram, a more aggressive calibration for the Cummins 6.7L Turbo Diesel produces an additional 15 lb.-ft. of torque. This improvement places the coveted engine ahead of the competition with 865 lb.-ft. of torque, while maintaining performance and EPA compliance.

The whole as appears more fully from a copy of the Cummins article entitled "2015 Cummins Powered Ram Trucks deliver Best-In-Class 865lb-ft of Torque" undated, produced herein as **Exhibit R-36**;

84. Finally, FCA and Cummins continue to falsely advertise that the Vehicles are tough and dependable, and that they deliver value for the customer, including through high fuel efficiency;

85. In 2016 Cummins advertised its Cummins Engines as follows:

> Cummins is ahead of the curve in developing engines that deliver everything from better fuel economy to improved reliability and durability. *We're even meeting greenhouse gas (GHG) emissions standards a year ahead of schedule.*
>
> There's no compromise on performance, as these engines deliver the same ratings lineup and torque as previous models.
> …
>
> Cummins 2013 engines are a step ahead in delivering lower operating costs and improved productivity – making it easier for you to stay a step ahead of your competition.

Cummins has since removed the italicized representation about meeting emissions standards.

The whole as appears more fully from a copy of an extract from Cummins' website at www.cumminsengines.com from 2016 as well as from today's date, produced herein *en liasse* as **Exhibit R-37**;

86. Below is a selection of public statements made by both FCA and Cummins as part of an orchestrated campaign to promote their green image, to sell the Vehicles as a cleaner and more economical alternative for customers looking to purchase heavy-duty trucks, and to promote their partnership with each other;

87. Statements by Cummins include the following:

(a) An advertising brochure regarding Cummins Engines from 2015:

> Superior Fuel Economy[.] Cummins offers leading fuel economy for a lower cost of operation.
>
> SmartAdvantage Powertrain[.] The smart way to get 3-6% better fuel economy. Cummins and Eaton have joined together to deliver a fully integrated powertrain with unprecedented performance and fuel economy.
>
> Single Module Aftertreatment[.] Cummins Emission Solutions has developed an ultra high efficiency aftertreatment system that takes up less space and is easier to install and simpler to maintain.

The whole as appears more fully from a copy of the Cummins brochure entitled "Top 10 Ways Cummins Is Redefining Value" dated 2015, produced herein as **Exhibit R-38**;

(b) On the Cummins' website (Exhibit R-36):

> Working closely to integrate with Ram, a more aggressive calibration for the Cummins 6.7L Turbo Diesel produces an additional 15 lb.-ft. of torque. This improvement places the coveted engine ahead of the competition with 865 lb.-ft. of torque, while maintaining performance and EPA compliance.

(c) On YouTube[7], in a video entitled "Inside Cummins: This is Jamestown (2016) – referring to its Jamestown, New York plant:

> [The] plant not only creates environmentally clean engines, but is also designed with a low carbon footprint.
>
> All in all the Jamestown plant is a truly remarkable place, building truly remarkable engines—engines that deliver better performance, better fuel economy, and better reliability while being better for the environment.

(d) On YouTube[8], in a video entitled "Inside Cummins: This is Cummins":

> Demanding that everything we do leads to a cleaner, healthier, safer environment.
>
> Emissions control was and will be a key component of the product profile of every product we produce. Now, fortunately for Cummins we have seen emissions compliance really as a means to creative and new technologies. Our engineers every day are challenged to

[7] https://www.youtube.com/watch?v=zS4STkQDWM4.
[8] https://www.youtube.com/watch?v=L5Mogpt-Hsg.

> create solutions for the customer and for the environment. Now whenever it appears that both of these masters cannot be served with the current technology, we are really well-prepared with skill and tools to pioneer new systems. Our company demands that everything we do leads to a cleaner, healthier, safer environment.

(e) On YouTube[9], in a video entitled "Cummins: Understanding What We Do":

> Today the engine remains critical to what we do and serves as a platform for the development of cutting-edge technology. We use this technology to maximize fuel economy and minimize emissions while still maintaining the power and dependability our customers expect.
>
> Our expanding emissions solutions business has been essential in Cummins' transition into a technology development company. For example, take a look at the amazing chemistry and reactions that happen inside our ultra low emissions systems containing a diesel oxidation catalyst coupled with a diesel particulate filter and selective catalytic reduction system.
>
> That's why we are the global leader in designing, manufacturing, and integrating exhaust after-treatment technology.
>
> To be successful, we must anticipate our customers' needs before our competition. For the past several years, emissions regulations played a prominent role in our product development. Now, with emissions near zero, our focus is changing.
>
> The technology we develop and deliver allows us to provide more power and increase fuel economy while minimizing the impact on the environment. Because we care about our communities and sustainability, we rebuild and reuse our products and offer the cleanest technology. In our facilities, we reduce energy use and recycle to meet our mission of demanding that everything we do leads to a cleaner, healthier, and safer environment.

(f) On YouTube[10], in a video entitled "The Cummins Aftertreatment System – Driver Training for On-Highway Heavy-Duty Truck Engines":

> Cummins engines use clean diesel technology which leads to near zero emissions.

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[9] https://www.youtube.com/watch?v=SIsFBIX_BFA.

[10] https://www.youtube.com/watch?v=FlG3GSxORew&index=13&list=PLqbUCAKgU5jC40a7Lwq-aC-JZsksenpkZ.

> The Cummins after-treatment system allows your truck to comply with federal laws covering exhaust emissions.

88. Statements by FCA include the following:

(a) In a news release after completing two million trucks together, FCA's Fred Diaz (President and CEO, Ram Truck Brand and Chrysler de Mexico) stated:

> The Ram Truck-Cummins diesel partnership is one of the industry's most enduring and certainly fitting of such a tribute…Both companies have benefited greatly, but Ram diesel customers are the real beneficiaries. Every day they experience the toughness and capability a Cummins-powered Ram can deliver.

The whole as appears more fully from a copy of the Cummins Press Release entitled "Two-millionth Cummins Pickup Engine Rolls off Line for Chrysler" undated, produced herein as **Exhibit R-39**;

(b) The 2013 Ram brochure (Exhibit R-34) proclaimed:

> The facts speak decisively: with over two million applications of a Cummins Turbo Diesel in a Ram truck, the history of this exceptional powertrain delivers capability and reliability second to none.

(c) The 2016 Ram 2500/3500 brochure proclaimed:

> Cummins + Ram Heavy Duty. It's a working combination that's now in excess of two million applications—the ever-growing figure that sums up the enduring quality of this working partnership.

The whole as appears more fully from a copy of the 2016 Ram 2500/3500 brochure, produced herein as **Exhibit R-40**;

(d) Ram's website proclaims the following:

- Ram Heavy Duty trucks are built to last for years to come, having endured upwards of 40,000 hours of intense vehicle system testing in the harshest scenarios on and off the road. Proven power and rugged capability combine to keep your truck going for as long as you do,

- Available Proven and Legendary 6.7L Cummins® Turbo Diesel I6 engine with Class-Exclusive Smart Diesel Exhaust Brake,

> [The 2500 truck is the] epitome of reliability.
>
> - Combine world-class capability with outstanding performance and you've got the available Proven and Legendary 6.7L Cummins® Turbo Diesel I6 engine. With a wide array of Best-in-Class and Class-Exclusive features and capabilities, the 6.7L Cummins engine turns your Ram 2500 into a dependable powerhouse.

The whole as appears more fully from copies of extracts from FCA's website at www.ramtrucks.com, produced herein *en liasse* as **Exhibit R-41**;

(e) The 2013 Ram sales brochure (Exhibit R-34) represents the following:

> There's only one way to get it done-and that's doing everything the right way. New 2013 Ram 2500/3500 empower you with fluent ease…Even the classic Ram job-rated attitude has evolved-giving you new maximum capability without compromise, and further backed with a raft of best-in-class attributes. The work just got easier-because these workers are the strongest in our history.
>
> A completely new approach to this design gives you exactly what a work truck should be: exceptional power, the capability to pull off heavy-duty assignments with confidence, and head-turning good looks.

(f) The 2014 Ram sales brochure represents the following:

> [T]his is a truck that can take a beating while knocking down jobs with no punch list in site. That's why the 2014 Ram Heavy Duty 2500-3500 models are built to put their shoulders down and deliver.

The whole as appears more fully from a copy of the 2014 Ram sales brochure, produced herein as **Exhibit R-42**;

(g) The 2015 Ram sales brochure represents the following:

> HEAVYWEIGHT PERFORMANCE. HEAVY-DUTY EFFICIENCY. AND EXCEPTIONALLY HEAVY ON COMFORT. This is where you come when the job goes beyond the ordinary—because the 2015 Ram Heavy Duty 2500/3500 models are all about the work.
>
> [The Cummins Turbo Diesel engine is] [v]irtually indestructible in design.

The whole as appears more fully from a copy of the 2015 Ram sales brochure, produced herein as **Exhibit R-43**;

(h) The 2017 Ram sales brochure represents the following:

> The Cummins Turbo Diesel and Ram Heavy Duty. Over nearly three decades, this working combination has figured into more than two million applications—and it's an ever-growing figure that sums up the enduring quality of this unbeatable partnership.

The whole as appears more fully from a copy of the 2017 Ram sales brochure, produced herein as **Exhibit R-44**;

89. In particular, FCA marketed the Vehicles specifically for people who relied on them for work. The promotional materials are replete with both images and words geared toward selling workers on using their trucks. Its 2013 sales brochure (Exhibit R-34), with the tagline "NEW MAX CAPABILITY GETS THE JOB DONE", is full of images of the Vehicles being used commercially. The 2013 brochure also states the following:

> There's only one way to get it done – and that's doing everything the right way. New 2013 Ram 2500/3500 empower you with fluent ease. For 2013, these tough new Ram Heavy Duty pickups have been transformed into beefier, more capable, and more technologically advanced workers than ever. Even the class Ram jobrated attitude has evolved—giving you new maximum capability without compromise, and further backed with a raft of best-in-class attributes. The work just got easier-because these workers are the strongest in our history.

90. The sales brochures for 2014–2017 contain similar work-related images and similar representations about the reliability and durability of Ram trucks for workers. For example:

(a) The 2014 sales brochure (Exhibit R-42) represented the following:

> THE BOLDEST WORK BEST WITH A HEAVY-DUTY ATTITUDE.
>
> It's a promise that's poured into the mold of the Heavy Duty badge itself: this is a truck that can take a beating while knocking down jobs with no punch list in sight.
>
> …
>
> These trucks have a history of arriving on job sites and ranches with a certain amount of attitude—and they have a stronger history of backing it up.

(b) The 2015 sales brochure (Exhibit R-43) represented the following:

> HEAVYWEIGHT PERFORMANCE. HEAVY-DUTY EFFICIENCY. AND EXCEPTIONALLY HEAVY ON COMFORT.
>
> This is where you come when the job goes beyond the ordinary – because the 2015 Ram Heavy Duty 2500/3500 models are all about the work. From hauling your boat or a trailer through mountains to ranching to managing a business, these workhorses are designed to deliver across the board, day-in and year-out.

(c) The 2016 sales brochure (Exhibit R-40) represented the following:

> ONE TOOL IS DESIGNED TO MASTER EVERY JOB OUT THERE.
>
> THIS TRUCK . . . DOES IT ALL.
>
> JOB-RELATED CAPABILITY.
>
> FROM HEAD TO TOE, IT'S MADE TO TOW.

(d) The 2017 sales brochure (Exhibit R-44) represented the following:

> SOME STRENGTHS YOU WEIGH. OTHERS YOU COUNT. SO COUNT ON RAM HEAVY DUTY FOR THE BIG JOBS.
>
> Leadership is defined by the just-right working combination of brains and brawn…[T]hese powerhouses are ready and willing to work taking on everything you put in front of them

91. Remarkably, the Respondents continued to make these advertisements and self-serving statements even after their falsity was proven;

92. The Respondents have been aware for several years of the true nature and cause of the Design Defect with the Cummins Engines. In particular, authorized dealerships around the country have seen sharp increases in repair work since the introduction the Cummins Engines. Further, the Respondents have intentionally withheld from, actively concealed and/or misrepresented to the Petitioner and to the Class Members this material information. Instead, the Respondents made numerous affirmative representations about the high quality and reliability of the Cummins Engines;

93. As a result of the Respondents' unfair and deceptive business practices, as set forth herein, the Cummins Engines and the Vehicles that house the Cummins Engines have a lower market value and are inherently worth less than they would be in the absence of the Design Defect;

(h) <u>The FCA Litigation</u>

94. Years after both FCA and Cummins 'discovered' that there was a defect in the SCR system in the Cummins Engines, Cummins began proceedings to recall certain 2500 trucks (model years 2013 – 2015), but there was a dispute between the parties as to who should be paying for it. The specific issue in the case was the "Diesel Engine Exhaust Aftertreatment System," which included a coated SCR system (Exhibit R-6);

95. On August 5, 2016, under the belief that Cummins would be pushing to force FCA to pay for the recall, FCA initially sued Cummins for $60 million (the estimated cost thereof). As the US EPA certificate holder, Cummins was the party that was required to complete the recall. Cummins had designed the SCR in compliance with the contracts between Cummins and FCA; however, the SCR "did not comply with all specifications, statutes, regulations, and other contractual requirements" of the FCA-Cummins contract. As a result, the SCR is defective" (Exhibit R-6);

96. In response, Cummins filed a motion for a temporary restraining order and preliminary injunction (Exhibit R-6). In so doing, Cummins admitted that "[c]ertain Ram 2500 Pickup trucks with Cummins 6.7 L diesel engines (the 'Vehicles') suffer an issue that results in the Vehicles failing to meet emissions requirements. The Vehicles must be recalled and repaired." Although conceding that "Cummins is the emissions certificate holder for the Vehicles and is responsible to the regulating agencies for the emissions requirements," Cummins nevertheless contended that "FCA refuses to cooperate in the recall, including notifying its dealers and customers of the recall, working with its third party suppliers to obtain the replacements parts, and actually performing the repairs through repairs at its authorized dealers" (Exhibit R-6). Moreover, "[o]n September 14, 2016 ARB and EPA informed Cummins that they will issue the rare remedy of ordering a forced recall against Cummins within seven days[.] FCA still refuses to initiate the recall[.]" (Exhibit R-6);

97. Cummins stressed that FCA and Cummins had a pattern and practice of cooperating in recalls; in fact, from 2007 to 2016, there have been "eight emissions[-]related voluntary recalls of the 2500 and 3500 Ram Pickups." FCA had worked with Cummins in every recall (Exhibit R-6);

98. According to the contractual relationship between FCA and Cummins, Cummins agreed to supply 6.7L diesel engines to FCA for their model year 2013-2015 Ram 2500 trucks, and the 3500 trucks, and Cummins would hold the emissions certificates (Exhibit R-6). However, the parties "neglected to execute a separate contract covering the regulatory obligations for the Vehicles";

99. One of the key startling facts asserted in the FCA Litigation is that FCA was aware of the emissions defect for years prior to the recall process. As Cummins

has stated, it "discovered that FCA had been receiving an increasing number of warranty claims relating to the SCR and emissions issues in the Vehicles for several years prior to Cummins discovering the emissions issues in the Vehicles" (Exhibit R-6). However, "FCA did not notify Cummins of the SCR warranty claims as they were occurring. Rather, FCA managed and paid for the SCR warranty claims on its own as they occurred" (Exhibit R-6). "Due to FCA's delay in informing Cummins, Cummins was unable to earlier investigate the SCR warranty issues and to identify potential solutions to the then possible emissions issues";

100. In response to Cummins' allegations, FCA acknowledged that in "September 2014, FCA US identified an increasing number of warranty claims related to the SCR system installed in the Vehicles. Cummins and FCA US investigated the issue and determined that a defect in the SCR system was causing emissions to exceed the applicable emission standard for [NO_x]."90 Hence, even by FCA's own admission, it knew about the defect years prior to Cummins initiating a voluntary recall; the actual dates when FCA first became aware of the problem are unknown;

101. Despite full awareness of the defect, "[t]he FCA employee responsible for sending out the [notification] letters informed Cummins on August 17, 2016, two days after FCA was supposed to have sent out the letters, that FCA was not sending out the letters until FCA and Cummins had worked out the commercial issues – among other things, an agreement in advance about which company would pay for the recall. FCA suddenly used the recall required by the agencies as commercial negotiating leverage" (Exhibit R-6);

102. According to a sworn declaration, two days after FCA was supposed to send out the recall letters, a FCA representative told Cummins that he had been ordered by its general counsel not to send out the letters until FCA and Cummins worked out the "commercial issues" between the companies (Exhibit R-6);

103. According to Cummins, "FCA will not effectuate the recall of its own vehicles unless Cummins agrees that it is 100% responsible for the cost of the recall before it occurs. FCA's position is unprecedented in at least the past 20 years of the Cummins-FCA relationship."93 FCA's participation in the recall was necessary, as "FCA holds the dealer relationships and customer data to identify recipients and send out the necessary notifications. FCA also has the necessary supply chain relationships, parts, service tools, and repair facilities to execute the recall and required repairs" (Exhibit R-6);

104. The environmental impact of the defective trucks on the road was substantial, as Cummins acknowledged. "It is in the public's best interest that Vehicles which are not emissions compliant are appropriately recalled and remedied to avoid future harm to the environment" (Exhibit R-6). "The environmental impact of over 135,000 vehicle owners with non-emissions compliant vehicles unable to obtain

a repair of those vehicles could be significant."96 According to the report submitted to the EPA, emissions exceeded the applicable limits by 50%.;

105. Despite this imminent harm, "FCA tried to extort Cummins to accept full responsibility for the recall costs merely because FCA holds the keys to the recall" (Exhibit R-6). As a result, FCA "disregards the needs of over 135,000 vehicle owners that are subject to the recall. These vehicle owners are currently driving vehicles which may not be emissions compliant because FCA has refused to identify the owners and notify them of the recall of their vehicles";

106. But, with respect to the recall, Cummins' hands were also not clean. In describing the impact of the recall to dealers, Cummins falsely represented to dealers that "[t]he impact of the proposed repair of the new replacement catalyst will be negligible related to emissions, fuel economy, driveability, performance, or safety." In its report to the EPA, Cummins represented that the "New SCR" would average 14.4 MPG, compared to 14.6 MPG for the "old SCR" (Exhibit R-6). As detailed elsewhere in this complaint, this contention was false, as truck owners experience a substantial drop in their MPG after the SCR system is replaced;

107. Cummins was also using the recall as commercial leverage. According to FCA, although it was "willing to assist and support the recall, and FCA US is not suggesting that it would prefer that Cummins undertake the recall alone, it remains true that FCA US could provide Cummins with the vehicle customers' names and Cummins could conduct the recall itself" (Exhibit R-6);

108. Ultimately, the district court entered the TRO and a preliminary injunction, and—following an unsuccessful appeal by FCA – the recall notices were issued. The cost issue remains unresolved; however, there is no reason to believe that the recall has successfully solved the problem that was the subject of the recall (which is only a small part of the Design Defect alleged herein);

(i) <u>Summative Remarks</u>

109. Class Members were told that they were purchasing and/or leasing low-emission, efficient, high-performing, dependable vehicles that would maintain high fuel economy;

110. The Respondents never disclosed to consumers that the Vehicles fail to meet federal environmental standards and do not result in reduced emission or improved fuel economy. The Respondents never disclosed that they prioritize profits over the environment and customer's time and money. The Respondents never disclosed that the Vehicles' emissions materially exceed the emissions from gasoline-powered vehicles, that the emissions exceed what a reasonable consumer would expect from a purportedly environmentally-complaint vehicle, and that emissions materially exceed applicable emissions limits in real world

driving conditions. The Respondents never disclosed that their defective SCR system would ultimately cost the consumer several hundred dollars a year because of increased fuel costs, and that they would perform a “silent recall” of the SCR system by flashing the computer, but failing to inform the customers;

111. The Petitioner and the Class Members that he seeks to represent suffered damages by purchasing and/or leasing Respondents’ Vehicles with the Design Defect and they are therefore entitled to damages;

112. The Respondents placed their Vehicles and/or Cummins Engines into the stream of commerce in Canada and elsewhere with the Design Defect and with the intention and expectation that customers, such as the Petitioner and Class Members, would purchase and/or lease the Vehicles based on their representations and/or omissions relating thereto;

113. The Respondents knew or ought to have known that purchasers and/or lessees of Vehicles equipped with their Cummins Engines would not be reasonably able to protect their interests, that such purchasers and/or lessees would be unable to receive a substantial benefit from the Cummins Engines and that customers would be relying on the Respondents’ representations to their detriment;

114. Canadian customers were never compensated for damages incurred as a result of purchasing and/or leasing the Vehicles with the Design Defect;

115. As a result of the Respondents’ unfair and deceptive business practices, the Petitioner and Class Members, have suffered an ascertainable loss of money and/or property and/or loss in value;

116. Consumers were induced into purchasing and/or leasing Vehicles containing the defective Cummins Engines through the use of false and misleading representations, thereby vitiating their consent and entitling them to claim:

a) A refund for the purchase price of the Vehicles or otherwise the overpayment for the purchase price or lease payments of the Vehicles which contain a Design Defect,

b) A refund of out-of-pocket expenses for repairs and/or replacements, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered,

c) The fair replacement value of the of the defective parts and/or the costs of rectifying the defects,

d) A refund of out-of-pocket costs associated with towing, including future costs of towing,

e) The loss of use of the Vehicles and expenditures for rental vehicles,

f) Compensation for the diminished value of their Vehicles,

g) Lost profits and revenue from the inability to utilize the Vehicles equipped with the defective Engines (caused by the long delays as the Respondents' mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the Design Defects), including loss of the use of other tangible property such as trailers and other equipment which cannot be used when the Vehicle is out of service;

h) The cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Cummins Engines,

i) Any other financial loss suffered as a result of the Design Defect,

j) Pain and suffering, trouble and inconvenience, and

k) Punitive or exemplary damages;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

117. On April 22, 2016, the Petitioner purchased a 2016 Dodge 2500 with a 6.7-litre diesel engine from Nicolet Chrysler Dodge Jeep Ram at 3975 Boul. Louis-Fréchette, in Nicolet, Quebec for a purchase price of $72, 397.46, the whole as appears more fully from a copy of the Contrat de Vente dated April 22, 2016, produced herein as **Exhibit R-45**;

118. A substantial factor in the Petitioner's purchasing decisions was the Respondents' extensive promotional and advertising campaign focusing on the superior quality, reliability, durability, fuel economy, lower operating costs and dealer support;

119. At the time of sale, the Petitioner was under the impression that he was purchasing a Vehicle that was free of any design defects; unbeknownst to him, he overpaid for the Vehicle, which was in fact suffering from the Design Defect;

120. Soon after purchasing this Vehicle, the Petitioner began noticing that the fuel economy was not as advertised in that his Vehicle required far more gas than he expected. He asked his dealer about this who informed him that the kilometrage was not set yet and that it would take a few thousand kilometres before the advertised fuel economy would be in effect;

121. In addition, the Petitioner noticed that he needed to put far more urea into his Vehicle than he had expected in that he needed to put 10 litres for approximately

every 1,000 kilometres, whereas he has expected to require urea for every 10,000 kilometres;

122. In approximately April to May 2017, the Petitioner's Vehicle needed to be re-set;

123. Neither the Respondents, nor any of their authorized dealers or other representatives related the Design Defect to the Petitioner and he was thus unaware of its existence;

124. The Petitioner was injured at the point-of-sale as the purchase price reflected a vehicle that was free of any defects and he suffered a prejudice in that he overpaid in reliance upon this misrepresentation and/or omission of fact;

125. Petitioner has recently discovered, while researching online, that the Respondents had been engaging in widespread deception and misrepresentations and that a class action was filed in the United States due to the Design Defect and due to the Respondents' failure to disclose, despite longstanding knowledge of its existence, the whole as appears more fully from a copy of the Class Action Complaint, produced herein as **Exhibit R-46**;

126. It was at this moment in time that the Petitioner was finally made aware that he had purchased a vehicle that was plagued by a Design Defect;

127. Petitioner has suffered ascertainable loss as a result of the Respondents' omissions and/or misrepresentations associated with the Design Defect, including, but not limited to, the purchase price of the Vehicle or otherwise overpayment for the Vehicle, compensation for the diminished value of his Vehicle, the out-of-pocket expenses associated with fuel as well as urea, pain and suffering, trouble and inconvenience, and punitive or exemplary damages;

128. Had Petitioner known about the Design Defect, he would either not purchased the Vehicle or would not have paid such a high price;

129. Petitioner's experiences mirror those of thousands of other owners and lessees of the Vehicles containing the defective Cummins Engines. The problem with the Engines is both significant and widespread;

130. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

131. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

132. Every member of the Class has purchased and/or leased trucks, buses and other heavy-duty Vehicles containing the defective Cummins Engines;

133. Had the Respondents disclosed the truth about the Cummins Engines, reasonable consumers would not have bought the Vehicles or would not have paid such a high price;

134. Each member of the Class is justified in claiming at least one or more of the following as damages:

a) A refund for the purchase price of the Vehicles or otherwise the overpayment for the purchase price or lease payments of the Vehicles which contain a Design Defect,

b) A refund of out-of-pocket expenses for repairs and replacements, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered,

c) The fair replacement value of the of the defective parts and/or the costs of rectifying the defects,

d) A refund of out-of-pocket costs associated with towing, including future costs of towing,

e) The loss of use of the Vehicles and expenditures for rental vehicles,

f) Compensation for the diminished value of their Vehicles,

g) Lost profits and revenue from the inability to utilize the Vehicles equipped with the defective Engines (caused by the long delays as the Respondents' mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the Design Defects), including loss of the use of other tangible property such as trailers and other equipment which cannot be used when the Vehicle is out of service,

h) The cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines,

i) Any other financial loss suffered as a result of the Design Defect,

j) Pain and suffering, trouble and inconvenience, and

k) Punitive or exemplary damages;

135. Respondents engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from Class Members;

136. All of these damages to the Class Members are a direct and proximate result of the Respondents' conduct;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

137. Petitioner is unaware of the specific number of persons who purchased and/or leased the Vehicles; however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);

138. Class Members are numerous and are scattered across the entire province;

139. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;

140. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity;

141. Also, a multitude of actions instituted in the same or different judicial districts risks having contradictory judgments on issues of fact and law that are similar or related to all members of the Class;

142. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them in one action;

143. Further a class action avoids the duplication of discovery and will conserve the resources of the parties, their counsel, and the courts;

144. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice;

B) <u>The claims of the members of the Class raise identical, similar, or related issues of law or fact</u>

145. Individual issues, if any, pale by comparison to the numerous common questions that are significant to the outcome of the litigation;

146. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct relating to the alleged Design Defect in the Vehicles' SCR emission control system that was used in the Cummins Engines;

147. The claims of the members raise identical, similar or related issues of fact or law, namely:

a) Are the Engines defective, non-merchantable, and/or subject to premature failure in the course of their normal use?

b) Did the Design Defect cause damages to the Petitioner and to the members of the Class?

c) Did the Respondents negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell and warrant the Engines and to train technicians to repair, diagnose, and service the Engines?

d) Did the Respondents know or should they have known about the Design Defect?

e) Did the Respondents misrepresent or fail to adequately disclose to consumers the true defective nature of the Engines?

f) Did the Respondents breach their express and/or implied warranty by not providing proper repairs and/or replacement of the Engines during the warranty period?

g) Were FCA-authorized dealerships unable to properly repair the Design Defect, such that it failed to honour its warranty obligations to properly repair the Cummins Engines during the warranty period?

h) Did the Respondents engage in unfair, false, misleading, and/or deceptive acts or practices in their designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting of the Cummins Engines?

i) Are the Respondents responsible for all related costs (including, but not limited to, (i) the purchase price of the Vehicles or otherwise the overpayment

for the purchase price or lease payments of the Vehicles which contain a Design Defect , (ii) the out-of-pocket expenses for repairs and replacements for the Vehicles, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered, (iii) the fair replacement value of the of the defective parts and/or the costs of rectifying the defects, (iv) towing costs for the Vehicles, including the cost of future towing, (v) the loss of use of the Vehicles and expenditures for rental vehicles, (vi) the diminished value of the Vehicles, (vi) lost profits and revenue from the inability to utilize the Vehicles equipped with the defective Cummins Engines (caused by the long delays as the Respondents' mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the Design Defects), including loss of the use of other tangible property such as trailers and other equipment which cannot be used when the Vehicle is out of service, (vii) the cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines, (viii) Any other financial loss suffered as a result of the Design Defect, and (ix) pain and suffering, trouble and inconvenience to Class Members as a result of the problems associated with the Vehicles), and in what amount?

j) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair practices and/or to force the Respondents to notify, recall, repair and/or replace Class Members Engines and/or Vehicles, which have not yet been recalled, free of charge?

k) Are the Respondents responsible to pay punitive damages to Class Members and in what amount?

148. The interests of justice favour that this application be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

149. The action that the Petitioner wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief, and declaratory judgment;

150. The conclusions that the Petitioner wishes to introduce by way of an application to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the Class;

DECLARE the Defendants have committed unfair, false, misleading, and/or deceptive conduct, particularly so with respect to their designing, manufacturing, importing/exporting, distributing, supplying, testing, inspecting, marketing, promotion, advertising, maintenance, leasing and/or selling and warranting the

Cummins Engines as compliant with the US EPA Standard and as free from a Design Defect;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

ORDER the Defendants to notify, recall, repair and/or replace Class Members Cummins Engines and/or Vehicles, which have not yet been recalled, free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the Class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the Class;

A) <u>The Petitioner requests that he be attributed the status of representative of the Class</u>

151. The Petitioner is a member of the Class;

152. The Petitioner is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for

the present action before the Courts of Quebec and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with his attorneys;

153. The Petitioner has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;

154. The Petitioner has given the mandate to its attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

155. The Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;

156. Petitioner has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the authorization hearing;

157. The Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

158. The Petitioner understands the nature of the action;

159. The Petitioner's interests are not antagonistic to those of other members of the Class;

160. Petitioner is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;

161. Petitioner has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread;

162. The Petitioner, with the assistance of his attorneys, has maintained a website at www.clg.org wherein other Class Members can and have entered their coordinates to join the class action and be kept up-to-date on its progress and development;

B) <u>The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal</u>

163. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;

164. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

165. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages, injunctive relief, and declaratory judgment;

APPOINT the Petitioner as representative of the persons included in the Class herein described as:

- All persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the model year 2013 through 2017 Dodge Ram 2500 and/or 3500 vehicles with a Cummins 6.7-litre diesel engine (collectively, the "Vehicles" and the "Cummins Engines"), or any other group to be determined by the Court;

IDENTIFY the principle issues of fact and law to be treated collectively as the following:

a) Are the Engines defective, non-merchantable, and/or subject to premature failure in the course of their normal use?

b) Did the Design Defect cause damages to the Petitioner and to the members of the Class?

c) Did the Respondents negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell and warrant the Engines and to train technicians to repair, diagnose, and service the Engines?

d) Did the Respondents know or should they have known about the Design Defect?

e) Did the Respondents misrepresent or fail to adequately disclose to consumers the true defective nature of the Engines?

f) Did the Respondents breach their express and/or implied warranty by not providing proper repairs and/or replacement of the Engines during the warranty period?

g) Were FCA-authorized dealerships unable to properly repair the Design Defect, such that it failed to honour its warranty obligations to properly repair the Cummins Engines during the warranty period?

h) Did the Respondents engage in unfair, false, misleading, and/or deceptive acts or practices in their designing, manufacturing, testing, distributing, delivering, supplying, inspecting, marketing, leasing and/or selling and warranting of the Cummins Engines?

i) Are the Respondents responsible for all related costs (including, but not limited to, (i) the purchase price of the Vehicles or otherwise the overpayment for the purchase price or lease payments of the Vehicles which contain a Design Defect , (ii) the out-of-pocket expenses for repairs and replacements for the Vehicles, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered, (iii) the fair replacement value of the of the defective parts and/or the costs of rectifying the defects, (iv) towing costs for the Vehicles, including the cost of future towing, (v) the loss of use of the Vehicles and expenditures for rental vehicles, (vi) the diminished value of the Vehicles, (vi) lost profits and revenue from the inability to utilize the Vehicles equipped with the defective Cummins Engines (caused by the long delays as the Respondents' mechanics repeatedly and unsuccessfully attempted to diagnose and/or repair the Design Defects), including loss of the use of other tangible property such as trailers and other equipment which cannot be used when the Vehicle is out of service, (vii) the cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Engines, (viii) Any other financial loss suffered as a result of the Design Defect, and (ix) pain and suffering, trouble and inconvenience to Class Members as a result of the problems associated with the Vehicles), and in what amount?

j) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair practices and/or to force the Respondents to notify, recall, repair and/or replace Class Members Engines and/or Vehicles, which have not yet been recalled, free of charge?

k) Are the Respondents responsible to pay punitive damages to Class Members and in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the Class;

DECLARE the Defendants have committed unfair, false, misleading, and/or deceptive conduct, particularly so with respect to their designing, manufacturing, importing/exporting, distributing, supplying, testing, inspecting, marketing, promotion, advertising, maintenance, leasing and/or selling and warranting the Cummins Engines as compliant with the US EPA Standard and as free from a Design Defect;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

ORDER the Defendants to notify, recall, repair and/or replace Class Members Cummins Engines and/or Vehicles, which have not yet been recalled, free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the Class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the Class;

DECLARE that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE, the MONTREAL GAZETTE, and LE SOLEIL;

ORDER that said notice be available on the Respondents' websites as well as Facebook page(s) and twitter accounts with a link stating "Notice to Owners/Lessees of vehicles with a model year model year 2013 through 2017 Dodge Ram 2500 and/or 3500 vehicles with a Cummins 6.7-litre diesel engine";

ORDER that said notice be sent by individual letters emailed and/or mailed to Class Members by using the Respondents' customer list;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

THE WHOLE with costs, including all publication and dissemination fees.

Montreal, July 10, 2017

(s) Andrea Grass

_____
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Per: Me Andrea Grass
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