

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In re: CATERPILLAR, INC., C13 and C15
ENGINE PRODUCTS LIABILITY
LITIGATION

MDL No. 2540

Master Docket No.
1:14-cv-03722 (JBS-JS)

SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs, Ronald Bagley (Utah), Bailey Coach Inc., (Pennsylvania), Brian Brown (Missouri), BK Trucking Co. (New Jersey), Leroy Bolton Trucking Co. (Ohio), David Brewer (Maryland), Bryant's Transport, Inc. (Texas), C&F Movers, Inc. (Florida), Columbia Petroleum Transportation, LLC (New York), DeCamp Bus Lines (New Jersey), Eagle Valley South, Inc. (Illinois), Easton Coach Company (Pennsylvania), Eclipse Charters & Tours, LLC (Indiana), First Priority Tours, Inc., d/b/a First Priority Trailways (Maryland), G&G Specialized Carriers, LLC (Wisconsin), Gentry Coach Company, d/b/a Gentry Trailways (Tennessee), Harmon Brothers Charter Services, Inc., (Georgia), John Lamanteer (New Jersey), K Double D, Inc. (Colorado), Kelton Tours Unlimited LLC (Alabama), Edward Charles McLean (North Carolina), MNS Enterprises, Inc. (Texas), NW Navigator Luxury Coaches LLC (Oregon), Roadrunner Charters, Inc. (Texas), Salud Services, Inc. d/b/a Endeavor Bus Lines (Florida), S&M Mercado, Inc. (California), German Saravia (California), Scenic Boundaries Trans., Inc. (Minnesota), Tri-City Charter of Bossier, Inc. (Louisiana), U.S. Transport (New Mexico), Vandalia Bus Lines, Inc., (Illinois), Ricky A. Williams (Michigan), and Windy City Limo (Illinois), bring this class action on behalf of themselves and putative classes of similarly situated persons who are users, purchasers, subsequent purchasers, owners, subsequent owners, and lessors (having rights to residual purchase of the vehicles at lease end) of vehicles with a C-13 or C-15 on-highway engine

certified as compliant with the EPA 2007 Heavy Duty On-Highway Emissions Standard (“2007 Emissions Standard”) manufactured in 2006, 2007, 2008, and 2009 by Defendant, Caterpillar, Inc. (“CAT,” “Caterpillar,” or “Defendant”). These engines are collectively referred to herein as “MY¹ 2007 CAT Engines.” In support hereof, Plaintiffs state as follows:

1. CAT designed, manufactured, sold for profit, and warranted MY2007 CAT Engines with an exhaust emission control system, known as the Caterpillar Regeneration System (“CRS”), containing integrated parts and components intended to reduce air pollutants, in particular, oxides of nitrogen and particulate matter, to levels not to exceed those set by the 2007 Emissions Standard.

2. CAT’s CRS is defective, which results in the vehicles with MY2007 CAT Engines failing to operate under all conditions and all applications on a consistent and reliable basis, even after repeated CRS warranty repairs and replacements. These repeated warranty repairs and replacements failed to repair or correct the CRS defect, resulting in damages to Plaintiffs and the putative class members. Damages include diminished value of the vehicles powered by MY2007 CAT Engines, out-of-pocket costs such as repair invoices and related hotel/taxi charges, and the costs to re-power the vehicles with suitable replacement diesel engines.

3. It is important to note what this suit is not about. This suit is not about the level of emissions from MY2007 CAT engines, nor is it about the certification of those engines. Plaintiffs do not claim that CAT violated any provision of the Clean Air Act, nor any regulation promulgated by the Environmental Protection Agency (“EPA”). Plaintiffs do not seek to enforce any provision of the Clean Air Act or regulations promulgated thereunder. Further, Plaintiffs are not asserting any claims under the Federal Emissions Control Warranty. Rather, Plaintiffs allege that MY2007

¹ “MY” stands for Model Year.

CAT Engines suffer from a common design defect that renders the MY2007 CAT Engines unreliable, resulting in the Engine failing, derating, or requiring repowering. This is a defect CAT knew, or should have known, about before releasing the MY2007 Engine into the stream of commerce. The CRS defect is one that CAT cannot fix, and that eventually led CAT to stop selling the Engines for on-highway vehicles. This defect caused all of the Plaintiffs and putative class members to suffer substantial damages.

JURISDICTION, VENUE, AND PARTIES

4. This class action is within the original jurisdiction of this Court pursuant to 28 U.S.C. §1332(a) and 28 U.S.C. §1332(d)(2) (the Class Action Fairness Act). The amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interest and costs, and at least one member of the putative classes is a citizen of a state different than the Defendant.

5. Venue in this District satisfies the requirements of 28 U.S.C. §1391(b)(1-2) because a substantial amount of the events and occurrences giving rise to the claims occurred in this District, or a substantial part of the property that is the subject of this action is situated in this District.

6. Plaintiff Ronald Bagley is a citizen of Utah, residing in Salt Lake City, Utah, and is President of Bagley Transport. Plaintiff Bagley purchased one vehicle containing a MY2007 CAT Engine on or about July 29, 2011. Plaintiff's vehicle has experienced incidence of emissions control failures resulting from the MY 2007 common defect, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took his vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician

performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

7. Plaintiff Bailey Coach is a Pennsylvania corporation with its principal place of business located at 123 E. Market St. York, Pennsylvania. Thus, Bailey Coach is a citizen of Pennsylvania. Plaintiff Bailey Coach purchased a vehicle containing a MY2007 CAT Engine on or about July 27, 2007. Plaintiff's vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

8. Plaintiff Brian Brown is a citizen of Missouri, residing in St. Louis, Missouri. Plaintiff Brown purchased and owns one vehicle containing a MY2007 CAT Engine on or about February 27, 2008. Plaintiff's vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages

9. Plaintiff BK Trucking Co. is a New Jersey corporation with its principal place of business located at 1000 Route 40, Newfield, New Jersey. Thus, Plaintiff is a citizen of New

Jersey. Plaintiff BK Trucking purchased twelve vehicles containing MY2007 CAT Engines between November 17, 2008 and October 6, 2010. Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

10. Plaintiff Leroy Bolton Trucking Co. is an Ohio corporation with its principal place of business located at 175 Miacomet Drive, Reynoldsburg, Ohio. Thus, Plaintiff is a citizen of Ohio. Plaintiff Leroy Bolton Trucking purchased one vehicle containing a MY2007 CAT Engine. Plaintiff's vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

11. Plaintiff David Brewer is a citizen of Maryland residing in Parkton, Maryland. Plaintiff Brewer purchased one vehicle containing a MY2007 CAT Engine on or about July 27, 2007. Plaintiff's vehicle has experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter

(“DPF”) regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

12. Plaintiff Bryant’s Transport, Inc. is a Texas corporation with its principal place of business located at 4014 Harvey Road, Crosby, Texas. Thus, Plaintiff is a citizen of Texas. Plaintiff Bryant’s Transport purchased one vehicle containing a MY2007 CAT Engine on or about December 2, 2008. Plaintiff’s vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

13. Plaintiff C&F Movers, Inc. is a Florida corporation with its principal place of business located at 3195 Commerce Parkway, North Port, Florida. Thus, Plaintiff is a citizen of Florida. Plaintiff C&F Movers leased with an option to buy one vehicle containing a MY2007 CAT Engine on or about March 22, 2011. Plaintiff’s vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, failed ARD heads, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT’s

authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

14. Plaintiff Columbia Petroleum Transportation, LLC is a New York limited liability company with its principal place of business located at 520 Broadhollow Road, Suite 200W, Melville, New York. Thus, Plaintiff is a citizen of New York. Plaintiff Columbia Petroleum purchased five vehicles containing MY2007 CAT Engines on or about December 28, 2006, November 8, 2007, December 5, 2007, November 13, 2008, and May 16, 2009. Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

15. Plaintiff DeCamp Bus Lines is a New Jersey corporation, with its principal place of business located at 101 Greenwood Ave., Montclair, New Jersey 07042. Thus, Plaintiff is a citizen of New Jersey. Plaintiff DeCamp purchased sixteen vehicles containing a MY2007 CAT Engine on or about July 27, 2007. Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

16. Plaintiff Eagle Valley South, Inc. is a Florida corporation with its principal place of business located at 2928 Shadow View Circle, Maitland, Florida. Plaintiff Eagle Valley South, Inc., thus, is a citizen of Florida. Plaintiff Eagle Valley purchased one vehicle containing a MY2007 CAT Engine in Melrose Park, Illinois. Plaintiff's vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work however the defects were not corrected in spite of CAT's representations that they were. As a result, Plaintiff has suffered substantial damages.

17. Plaintiff Easton Coach is a Pennsylvania corporation with its principal place of business located at 1200 Conroy Pl., Easton, Pennsylvania. Thus, Easton is a citizen of Pennsylvania. Plaintiff Easton Coach purchased one vehicle containing a MY2007 CAT Engine on or about July 27, 2007. Plaintiff's vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, however, the defects were not corrected in spite of CAT's representations that they were. As a result, Plaintiff has suffered substantial damages.

18. Plaintiff First Priority is a Maryland corporation with its principal place of business located at 4203 Forestville Road, District Heights, Maryland. Thus, Plaintiff is a Maryland citizen. Plaintiff First Priority purchased six vehicles containing a MY2007 CAT Engine. Plaintiff's

vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

19. Plaintiff G&G Specialized Carriers, LLC is a Wisconsin limited liability company with its principal address located at S82 W19480 Apollo Dr., Muskego, Wisconsin. Thus, Plaintiff is a citizen of Wisconsin. Plaintiff G&G purchased three vehicles containing MY2007 CAT Engines on or about April 7, 2008. Plaintiff’s vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

20. Plaintiff Gentry is a Tennessee corporation with its principal place of business located at 2519 Mitchell Street, Knoxville, Tennessee 37919. Thus, Plaintiff is a citizen of Tennessee. Plaintiff purchased at least three vehicles containing MY2007 CAT Engines on or about April 3, 2007, April 3, 2008, and March 28, 2008. Plaintiff’s vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, failed ARD heads,

engine derating and shutdown, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

21. Plaintiff Harmon Brothers is a Georgia corporation with its principal place of business located at 5094 Westbrook Road, Union City, Georgia. Thus, Plaintiff is a citizen of Georgia. Plaintiff Harmon Brothers purchased two vehicles containing a MY2007 CAT Engine on or about March 14, 2008. Plaintiff’s vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

22. Plaintiff Kelton Tours is an Alabama limited liability company, with its principal place of business located at 1625 Forrest Ave., Gadsden, Alabama. Thus, Plaintiff is Kelton tours is a citizen of Alabama. Plaintiff Kelton Tours purchased a vehicle containing a MY2007 CAT Engine on or about June 18, 2009. Plaintiff’s vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician

performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

23. Plaintiff John Lamanteer is a citizen of New Jersey, residing 1668 Firetower Road Chester, South Carolina. While residing in New Jersey, Plaintiff Lamanteer leased via a TRAC option² one vehicle containing a MY2007 CAT Engine on or about May 23, 2008. Plaintiff's vehicle has experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

24. Plaintiff K Double D, Inc. is a Colorado corporation with its principal place of business located at 41273 Dublin Drive, Parker, Colorado. Thus, Plaintiff is a citizen of Colorado. Plaintiff K Double D purchased one vehicle containing a MY2007 CAT Engine on or about February, 2009. Plaintiff's vehicle has experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty

² Vehicle leases with a Terminal Rental Adjustment Clauses are traditional methods of financing the purchase of commercial equipment. The Terminal Rental Adjustment Clause shifts the risk of diminished value onto the lessee at the lease termination. As explained herein, because the defective MY2007 engines diminish the values of the vehicles, all Plaintiffs and Class member who financed the purchase of their vehicles powered by MY2007 CAT Engines with leases containing a Terminal Rental Adjustment Clause have been damaged.

service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

25. Plaintiff Eclipse is an Indiana limited liability company, with its principal place of business located at 3333 Grant Street, Gary, Indiana 46408. Thus, Plaintiff Eclipse, is a citizen of Indiana. Plaintiff purchased eight vehicles containing MY2007 CAT Engines in or around the years 2007, 2008 and 2010. Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

26. Plaintiff Edward Charles McLean is a citizen of North Carolina, residing in Laurel Hill, North Carolina. Plaintiff McLean leased via a TRAC option a vehicle containing a MY2007 CAT Engine on or about January 7, 2008. Plaintiff's vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

27. Plaintiff MNS Trucking Enterprises, Inc. is a Texas corporation with its principal place of business located at 5715 Schurmier Road, Houston, Texas. Thus, Plaintiff MNS is a citizen of Texas. Plaintiff MNS Trucking purchased one vehicle containing a MY2007 CAT Engine on or about January 2009. Plaintiff's vehicle has experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

28. Plaintiff NW Navigator Luxury Coaches, LLC is an Oregon corporation with its principal place of business located at 10360 N. Vancouver Way, Portland, Oregon 97217. Thus, NW Navigator is a citizen of Oregon. Plaintiff NW Navigator purchased a vehicle containing MY2007 CAT Engines in or around 2009. Plaintiff's vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

29. Plaintiff Roadrunner is a Texas corporation, with its principal place of business located at 1634 E. Irving Blvd, Irving, Texas 75060. Thus, Plaintiff is a citizen of Texas. Plaintiff purchased fourteen vehicles containing MY2007 CAT Engines in or around 2010 and 2012.

Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

30. Plaintiff Salud Services, Inc. is a Florida corporation with its principal place of business located at 7915 NW 5th Court, Miami, Florida 33150. Thus, Plaintiff is a citizen of Florida. Plaintiff Salud purchased six vehicles containing MY2007 CAT Engines. Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

31. Plaintiff S&M Mercado, Inc. is a California corporation with its principal place of business located at 498 Dogwood Court, Tulare, California. Thus, Plaintiff is a citizen of California. Plaintiff S&M Mercado purchased one vehicle containing a MY2007 CAT Engine on or about March 12, 2010. Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown,

and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

32. Plaintiff German Saravia is a citizen of California residing in Brawley, California. Plaintiff Saravia purchased one vehicle containing a MY2007 CAT Engine on or about September 7, 2010. Plaintiff’s vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took his vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

33. Plaintiff Scenic Boundaries Trans., Inc. is a Wisconsin corporation, but with its principal place of business located at 605 Old Military Road, Sandstone, Minnesota. Thus, Plaintiff is a citizen of Wisconsin and Minnesota. Plaintiff purchased at least six vehicles containing MY2007 CAT Engines on or about May 6, 2008, August 12, 2008, September 26, 2008, September 29, 2008, and June 30, 2009 in Minnesota. Plaintiff’s vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period.

CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

34. Plaintiff Tri-City Charter of Bossier, Inc. is a Louisiana corporation with its principal place of business located at 1323 Canyon Court, Bossier City, Louisiana 71111. Thus, Tri-City Charter is a citizen of Louisiana. Plaintiff Tri-City Charter purchased at least ten vehicles containing a MY2007 CAT Engine. Plaintiff's vehicles have experienced incidence of CRS failure and suffered engine and regeneration problems, including but not limited to repeated check engine lights and failed regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

35. Plaintiff U.S. Transport is a Colorado corporation with its principal place of business located at 241 W. 56th Avenue, Denver, Colorado. Thus, Plaintiff is a citizen of Colorado. Plaintiff U.S. Transport purchased at least ten vehicles containing a MY2007 CAT Engine on or about October 20, 2008. Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

36. Plaintiff Vandalia is an Illinois Corporation with its principal place of business located at 312 West Morris Street, Caseyville, Illinois 62232. Thus, Plaintiff is a citizen of Illinois.

Plaintiff purchased at least eight vehicles containing MY2007 CAT Engines. Plaintiff's vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

37. Plaintiff Ricky A. Williams is a citizen of Michigan, residing in Detroit, Michigan. Plaintiff Williams purchased one vehicle containing a MY2007 CAT Engine on or about April 12, 2007. Plaintiff's vehicle experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown, and failed Diesel Particulate Filter ("DPF") regenerations. Plaintiff took his vehicle in for warranty service by CAT authorized technicians during the warranty period. CAT's authorized technician performed the warranty work, but failed to correct the defect despite CAT's representations that it was. As a result, Plaintiff has suffered substantial damages.

38. Plaintiff Windy City Limousine LLC is an Illinois corporation with its principal address located at 9377 W. Grand Ave., Franklin Park, 60131, Illinois. Thus, Plaintiff is a citizen of Illinois. Plaintiffs Windy City leased eleven vehicles containing MY2007 CAT Engines in or around 2009 and 2010. Plaintiffs vehicles experienced incidence of emissions control failures resulting from the MY 2007 common defects, in particular CRS failures of regeneration, causing repeated check engine lights, high soot loads, ARD head failures, engine derating and shutdown,

and failed Diesel Particulate Filter (“DPF”) regenerations. Plaintiff took its vehicles in for warranty service by CAT authorized technicians during the warranty period. CAT’s authorized technician performed the warranty work, but failed to correct the defect despite CAT’s representations that it was. As a result, Plaintiff has suffered substantial damages.

39. Caterpillar is a Delaware corporation with its principal place of business located at 100 NE Adams Street, Peoria, Illinois. CAT, thus, is a citizen of Delaware and Illinois. CAT designed, manufactured, distributed, delivered, supplied, inspected, marketed, leased and sold for profit, the MY2007 CAT Engine.

GENERAL ALLEGATIONS

A. MY2007 CAT Engine Emission System

40. At the time CAT sold the MY2007 CAT Engines, the federal emissions standards set limits on the maximum amount of Oxides of Nitrogen (“NOx”), Non-Methane Hydrocarbons, Non-Methane Hydrocarbon Equivalent, Carbon Monoxide, and Particulate Matter (“PM”) that could be emitted by heavy duty on-highway diesel vehicles and engines. *See* 40 CFR §86.007-11. These standards, referred to herein as “2007 Emissions Standards,” were adopted in 2001, but did not become effective until 2007.

41. After the EPA adopted the 2007 Emissions Standards, CAT made the business decision to investigate, design, manufacture, and lease and sell for profit heavy-duty diesel engines its own proprietary technology to try to comply with the requirements of the Standards.

42. On information and belief, in October 2003, CAT’s Aftertreatment Technologies Group launched a project to design an engine-independent (meaning independent of engine NOx and PM output), self-regenerating, Diesel Particulate Filter. The directive for the project was to provide a PM Aftertreatment solution, i.e., reduction in exhaust pollutants after the exhaust leaves

the engine, for 2007 diesel engines within performance and cost constraints. In particular, the emissions controls would permit the Engines to operate under all conditions and all applications, without unscheduled, maintenance for 1,000,000 miles.

43. CAT's various development, design, engineering, manufacturing, and business teams participated in approval of the CRS exhaust emission control ultimately used in CAT's MY2007 Engines. CAT designed its CRS, branded "ACERT" (Advanced Combustion Emissions Reduction Technology), to reduce emissions by trapping PM (i.e., soot) from the combustion process in the Diesel Particulate Filter. Once trapped, the PM is supposed to be burned off by exhaust temperatures and oxidized in a process known as "regeneration" that requires consistently high temperatures (often in excess of 1000°F).

44. The CRS is materially identical in all MY2007 CAT Engines. A schematic of the system is at page 2 of Exhibit A.

45. CAT's CRS was designed to perform DPF regeneration both passively and actively without the use of a Diesel Oxidation Catalyst. For passive regeneration, the engine provides exhaust gas temperature to burn off the PM. When the exhaust temperature is not sufficient, however, active regeneration is required, meaning the exhaust temperatures must be increased to burn off PM collected by the Diesel Particulate Filter.

46. The CAT CRS was designed without a Diesel Oxidation Catalyst (DOC) as a means of regeneration under all conditions and all applications. The DOC is a well-known technology to achieve regeneration. In fact, CAT employed a DOC in its heavy duty on-highway diesel engines produced before 2007, and uses a DOC (and Selective Catalytic Reduction, "SCR") in its current off-highway heavy duty diesel engines.

47. To achieve the exhaust temperatures necessary for active regeneration in the DPF without a DOC, CAT's CRS utilizes an Aftertreatment Regeneration Device ("ARD") to provide additional heat (600-650 °C) to the MY2007 CAT Engine's exhaust. Compressed air and ultra-low sulfur diesel fuel enter the head of the ARD where they are mixed and ignited by the spark plug. Once ignited, the mixture combines with engine exhaust flow directed into the inlet of the Filter to enable regeneration (burning) of the PM trapped by the Filter.

48. Due to the interrelationship of the PM/soot load and the exhaust temperature, proper "thermal management" is essential to the function of the CRS. In order for the CRS system to work properly, it must monitor and control the exhaust temperature consistently and precisely. If the temperature is too high, the DPF cracks and cannot successfully regenerate. A temperature that is too low prevents the PM from burning off, clogging the DPF with excessive soot loads impeding exhaust flow. As explained herein, the CAT CRS cannot, and does not reliably maintain the required thermal management under all conditions and applications as represented.

49. To conduct this thermal management, the CRS operates with the use of an Electronic Control Module ("ECM"), which is a comprehensive, programmable system that monitors all systems of the MY2007 CAT Engine. The ECM continuously monitors engine operating conditions, controls DPF regeneration, interfaces with the vehicle's sensor inputs, and performs fault detection and on-board diagnostic reporting. The ECM regulates and monitors the operation of the DPF and ARD to ensure that the DPF soot levels remain within operational specifications, and it is programmed to recognize and record a failure of regeneration, inform the operator, and take protective action if regeneration does not, or cannot, be achieved. These protective measures are initiated to protect against the adverse consequences of regeneration failure, including the prevention of exhaust emissions exceeding the EPA emissions standards.

50. When a MY2007 CAT Engine CRS fails or is unable to regenerate, the ECM diagnoses the failure and either commands the Check Engine Light to advise the operator of a system failure, derates the engine, or engages an engine shutdown protocol. If this failure is not corrected, the ECM proceeds through these protective measures. Engine “derating,” means lowering of the engine horsepower and speed (in theory, to allow the vehicle to get to an authorized dealer/repair facility). Engine shut down means that the Engine is rendered inoperable. When there is a regeneration failure, the vehicle requires servicing at an authorized CAT repair facility, where an attempt is made to remedy the problem.

51. The ECM not only diagnoses problems according to pre-set “diagnostic codes,” but records (“stores” or “logs”) the responses, *i.e.*, Check Engine Light, derate, and shut down, for later review and analysis. When a vehicle is brought in for emissions warranty repair for a CRS failure, the failure can be identified by accessing the ECM stored data. Furthermore, each separate failure detected related to a vehicle’s CRS is designated by a specific code within the group of codes relating to CRS. CRS-related failures for each vehicle can be precisely identified by accessing the ECM stored data for that vehicle. For instance, when the ECM stored data for a vehicle shows code 1110-31 (“Engine Protection System has Shutdown Engine”) with code 3719 (“Diesel Particulate Filter Collects Excessive Soot”), that means the vehicle’s engine was shut down because the DPF failed to properly regenerate after repeated attempts.

52. Defendant knew, or should have known, that its CRS could not regenerate the DPF on a consistent and reliable basis, under all conditions and applications. Nevertheless, CAT rejected known, reliable exhaust emission controls in the MY2007 CAT Engines.

53. The CRS defects alleged herein only affect the use, operation, and movement of Plaintiffs' vehicles and do not implicate any violation, or enforcement of the Clean Air Act, or the EPA emissions standards.

B. Defective Nature of the MY2007 CAT Engine Emission System

54. CAT manufactured and uniformly marketed the MY2007 CAT Engine to provide regeneration "under all conditions and all applications," without "unscheduled maintenance" for the expected life ("durability") of the engine "to overhaul," which CAT represented as 1,000,000 miles.

55. Notwithstanding CAT's representations, the MY2007 CAT Engine CRS is unable to maintain reliable thermal management of exhaust temperatures sufficient to achieve regeneration under all operating conditions and all applications, and as a result, the CRS's protective measure rendering the vehicles inoperable requiring remediation by authorized CAT technicians using proprietary CAT equipment and methods.

56. Because the CRS cannot reliably regenerate the DPF, the ECM routinely notifies the vehicle operator of the problem, causing the MY2007 CAT Engine to illuminate a Check Engine Light (CEL), to derate and, ultimately, shut down. This has occurred in the vehicles equipped with MY2007 CAT Engines on a frequent, repeated, and endemic basis, despite numerous attempts to remediate the causes of these regeneration failures through authorized "repair and replacement."

57. Each of Plaintiffs' vehicles that was equipped with MY2007 CAT Engines suffered numerous CRS failures, resulting in repeated breakdowns and lengthy (and futile) repair attempts, resulting in a significant reduction in the value of the vehicles, and associated out-of-pockets costs, such as towing bills, repair invoices, and related hotel/taxi charges.

58. Knowledge of the CRS emissions system defect has now permeated the market, leaving Plaintiffs (and all other class members) unable to sell their vehicles without incurring substantial losses. On information and belief, even CAT's own finance company, Caterpillar Financial, has recognized the diminished value of these vehicles, as demonstrated by its practice of factoring in an impairment value when financing a deal involving a vehicle with a MY2007 CAT Engine.

59. CAT cannot correct the defect in the MY2007 CAT Engines and has been unable to correct the defect from the time the MY2007 CAT Engines were brought to market. Thus, the MY2007 CAT Engine in each of the Plaintiffs' (and all other class members') vehicles must be replaced.

60. On information and belief, CAT discontinued manufacture of the MY2007 CAT Engines in 2009-2010 because the defect in the CRS could not be corrected.

C. CAT's Knowledge of the Defective Nature of the MY2007 CAT Engine Emission System

61. Since first putting the MY2007 CAT Engines on the market, the warranty claims for the defects in the parts and components of CAT's emission controls have been substantial, making CAT fully aware of the significant costs that owners and lessees of the vehicles equipped with MY2007 CAT Engines incur as a result of the defective emission related parts and components.

62. This was not a surprise to CAT, as it has known since at least 2006, prior to the sales of the MY2007 CAT Engines, that the CRS parts and components were not sufficiently robust to achieve the represented levels of reliability and durability. Despite this knowledge, CAT put the defective MY2007 CAT Engine on the market beginning January 2007, causing substantial damages to Plaintiffs and members of the class.

63. CAT knew, or should have known that the CRS in the MY 2007 Engines required precise thermal management to effect regeneration of the DPF and that the CRS was not sufficiently robust to achieve reliable thermal management requirements.

64. After the 2007 launch of the MY2007 CAT Engine, CAT tracked emission related warranty claims. CAT recognized that there were so many service problems for emission related parts and components that it had insufficient inventory to replace the warranted emission-related parts and components and could not produce non-defective emissions related parts and components to repair or replace. CAT realized that attempts to correct the defects failed.

65. In 2008, internally CAT acknowledged that the entire MY 2007 Engine population was plagued with repeated reliability issues caused by the CRS system. These problems began to manifest immediately after the MY 2007 Engines were released.

66. On information and belief, CAT utilized a “Field Follow” program to track CRS field performance. This performance “metric” showed excessive failures rates immediately (first 100 hours of operation) upon release of the MY 2007 Engines, and for the first year as high as 65% for the CRS system.

67. CAT also tracked warranty data on defective emission related parts and components through a number of performance indices, including its Continued Product Improvement program (“CPI”). Through this program, CAT examined returned and/or failed parts from the CRS; analyzed potential root causes for the problems with the CRS, which CAT admitted did not include operator error or misuse; unsuccessfully attempted to correct the defect with the CRS; and predicted significant failure rates of these parts and components in the course of their represented expect operating life, some as high as 99%.

D. CAT's Failure To Honor Warranties Covering The Defective MY2007 CAT Engine Emission System

68. CAT warrants the user of every MY 2007 that its engines would be free of defects in workmanship and materials. *See* "Limited Engine Warranty", (hereinafter "Engine Warranty" or "engine warranty" or "express warranty" or "warranty") at Exhibit B.³

69. Although CAT was obligated to correct the defect with the MY2007 CAT Engine CRS, it failed to do so (and, indeed, is unable to do so), yet represented to Plaintiff and the class that its "warranty repairs" corrected the defect. As a result Plaintiffs and putative class members have repeatedly brought their vehicles in for warranty repairs related to the CRS only to have the same replacements and repairs continue to fail.

70. CAT breached its engine warranty by failing to correct the defects in the CRS, preventing the operation of the MY2007 CAT Engines under all operating conditions and applications, for the reasonably expected life of the vehicles.

E. Experiences Of Plaintiffs And The Class Members With Repeated Failures Of The Defective MY2007 CAT Engine Emission System

71. Soon after purchase or lease, Plaintiffs' MY2007 CAT Engines detected numerous and various faults in the emission related parts and components causing operation of the CRS to fail, which triggered warning, derating, and shut down necessitating delivery of the vehicle to an authorized CAT repair facility for emissions warranty work. These repeated regeneration failures rendered the vehicles inoperable for the transportation of goods or persons. Plaintiffs repeatedly took their vehicles to authorized Caterpillar repair facilities for warranty repair and replacement,

³ As explained below, Plaintiffs allege that CAT's unilateral restriction in its warranty to cover solely "workmanship and material" defects is unenforceable as CAT waived this limitation during its course of conduct of repairing CRS defects brought to it during the warranty period. *See* ¶¶ 84-90, below.

but the repair and replacement did not correct the defect. The unavailability of the vehicles for transportation caused Plaintiffs to incur additional damages.

72. In spite of repeated warranty work on the CRS, Plaintiffs and the class members experienced repeated instances of warning lights illuminating, engine derating, shutdown, and other failures all stemming from the CRS's failure to properly regenerate the DPF.

73. CAT represented to Plaintiffs and the class members that each emission warranty repair/replacement would correct the defect, although it knew or should have known that the CRS would fail again, leading to further engine derating and shutdowns.

74. CAT continued to provide Plaintiffs and the class with ineffectual measures. As a result, the durational, and the limits as to how CAT may remedy defects that are contained in the express warranty fail their essential purpose, *i.e.*, to provide non defective, emission related parts and components which would operate under all operating conditions and all applications.

CLASS ACTION ALLEGATIONS

75. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as members of the classes proposed below, under Federal Rule of Civil Procedure 23. The requirements of subsections (a), (b)(2), and (3) to Rule 23 are met with respect to the classes defined below.

76. Plaintiffs seek to represent, and bring this action on behalf of, the following Class:

Nationwide Class—All persons and entities, in the United States , who are users, purchasers, subsequent purchasers, owners, subsequent owners, and lessors (having purchased via a TRAC option or some rights to residual purchase of the vehicles at lease end) of a vehicle powered by a MY2007 CAT Engine. The above proposed class excludes: (1) CAT, any entity in which CAT has a controlling interest, and its legal representatives, officers, directors, employees, assigns, and successors; (2) the Judge to whom this case is assigned and any member of the Judge's staff or immediate

family; (3) Class Counsel; and (4) claims for personal injury and emotional distress.

77. On information and belief, CAT sold thousands of MY2007 CAT Engines. Each of these Engines contained a defectively designed CRS. While the precise number and identities of the members of the Classes are unknown to Plaintiffs, this information can be ascertained through reasonable discovery diligence and appropriate notice. Given CAT's sales volume, there will be at least 40 putative class members as to each individual claim asserted by Plaintiffs.

78. There are numerous common questions of law and fact that predominate over any questions affecting only individual members of the Classes. Among these common questions of law and fact are the following:

- a. Whether the CAT's CRS was defectively designed;
- b. Whether CAT sold the MY2007 CAT Engine with a defective emission control system that fails to regenerate the DPF under all conditions and all applications resulting in warnings, derating, shutdowns and unscheduled maintenances;
- c. Whether CAT breached its warranty obligations;
- d. Whether CAT's warranty repair conduct caused a waiver of its "workmanship and material" provision in the warranty;
- e. Whether CAT violated its statutory consumer protection obligations;
- f. Whether CAT knew its CRS was defective;
- g. When CAT learned that its CRS was defectively designed and incapable of reliable thermal regeneration in a real-world setting;
- h. Whether CAT knew that its CRS would not operate under all conditions, and all applications, without unscheduled maintenance for the represented expected life of the MY2007 CAT Engine;

- i. Whether CAT failed to disclose the design defect in its CRS exhaust emission control;
- j. Whether the design defect diminished the value of the vehicles equipped with the MY2007 CAT Engine;
- k. Whether Plaintiffs and the members of the Classes have suffered damages as a result of the conduct alleged herein, and if so, the measure of such damage, including as a result of the failure of essential purpose of the warranty.

TOLLING AND ESTOPPEL

79. Plaintiffs' causes of action did not arise until Plaintiffs discovered, or by the exercise of reasonable diligence should have discovered, that they were injured by CAT's wrongful conduct as alleged herein. Because CAT concealed and failed to disclose the design defect with its MY2007 CAT Engine and its CRS exhaust emission control, and because CAT affirmatively warranted and misrepresented that the emission related parts and components were free of defects, Plaintiffs did not and could not have discovered the defect through reasonable diligence.

80. The applicable statutes of limitations have been tolled by CAT's knowing and active concealment of the material facts regarding the defective MY2007 CAT Engine, and in particular its CRS exhaust emission control and by CAT's affirmative warranty and misrepresentations that the emissions system was free of defects. CAT kept Plaintiffs and the members of the Classes ignorant of vital information essential to pursue their claims, without any fault or lack of diligence on the part of Plaintiffs and class members.

81. CAT was and is under a continuous duty to disclose to Plaintiffs and the members of the Classes the true character, quality, and nature of the MY2007 CAT Engine. At all relevant

times, and continuing to this day, CAT knowingly, affirmatively, and actively misrepresented and concealed the true character, quality, and nature of the MY2007 CAT Engine, including the defective nature of its CRS and the fact that the defect could not be effectively corrected.

82. Plaintiffs and the Classes repeatedly presented their MY2007 CAT Engines to authorized CAT dealerships and repair facilities for failure of the emission related parts and components. Ineffectual repairs and replacements were performed only to have the emission related parts and components subsequently fail. In each instance CAT affirmed that:

- a. the emission related parts and component failures were not the result of any application or installation that CAT deemed improper;
- b. the emission related parts and component failures did not involve attachments, accessory items or parts not sold or approved by CAT;
- c. the emission related parts and component failures were not the result of any improper engine maintenance, repair, neglect, or abuse;
- d. the emission related parts and component failures were not the result of improper fuel, lubricants or liquids;
- e. the CRS failures were not the result of any unreasonable delay in making the vehicle available after notification of the problem;
- f. the CRS failures were warrantable; and
- g. the CRS defects were corrected following repair and replacement.

83. As such, CAT is estopped from making any claim that its defectively designed CRS was not covered by its warranty.

84. Based on the foregoing, CAT is estopped from relying on any statutes of limitation in defense of this action. CAT is also estopped from relying on any statutes of limitation in defense of this action because it did not repair these known defects prior to selling or leasing these vehicles.

85. Pursuant to the doctrines of Equitable Tolling, Equitable Estoppel, and Fraudulent Concealment, the period for bringing claims shall not be barred due to any statute of limitations or statute of repose. With respect to each and every cause of action and Count asserted herein, Plaintiffs expressly plead Equitable Tolling, Equitable Estoppel, and Fraudulent Concealment and its application thereto.

86. CAT knew, or should have known that the emissions control technology, the CRS deployed in the MY 2007 Engines was inadequately tested for reliability and durability; that CAT chose the CRS technology to advance their own interest in making the CRS patentable and at lower costs; and that its emissions controls would not, and could not reliably regenerate the DPF under all conditions and all application. Further, CAT knew that it was doing repeated authorized warranty repairs of the CRS inducing the operators of the MY 2007 Engines to believe that the defects in the CRS were warrantable when it knew or should have known that the CRS failures were the direct result of a defective design, and advising those operators after authorized repairs that the defects causing the failures had been correct when in fact CAT knew or should have known that the defects were not and could not be corrected.

87. CAT knew, or should have known:

- a. That it was deploying emissions controls that were new and proprietary;
- b. That its heavy duty diesel engines, and the MY 2007 Engines in particular would require CAT authorized diesel technicians, and licensed CAT software to repair;

- c. That the CRS was designed as a complex system creating exhaust temperatures in excess of 600 °C imposing extraordinary reliability and durability stresses on the system components;
- d. That commercial vehicle purchasers and lessees would need to specify the diesel engine for OEM installation and that CAT representations of performance, reliability and durability, especially of the emissions controls were material to purchasers and lessees of the MY2007 Engines;
- e. That commercial vehicle purchasers and lessees, like Plaintiffs and the class would only specify the MY 2007 Engines provided that it was fully warranted for all defects including failures of performance of the CRS;
- f. That commercial vehicle purchasers and lessees of CAT MY 2007 Engines could not specify alternative emission controls to CAT's CRS;
- g. That the commercial purchasers and lessees would not have the capacity to repair or replace the MY 2007 Engine emissions controls and would rely upon CAT to determine, through pre-sale testing, that the CRS would reliably regenerate the DPF under all condition, in all applications, for the expected operational life to overhaul, represented by CAT as 1,000,000 and would correct any defects; and,
- h. That CAT and only CAT designed the MY 2007 Engine CRS, drafted the Engine Warranty, accepted repairs to the CRS as warrantable during the warranty period, and knew or should have known that the problems would and did continue because of the defective design.

88. All conditions precedent to the filing of this Complaint have been satisfied. This Complaint has been filed prior to the expiration of any applicable statute of limitations or statute of repose.

89. CAT is also estopped from relying upon any and all limitations on time, and mileage, and type of defect contained in any of its warranties because (1) CAT knew prior to sale that its MY2007 Engines were defectively designed and unlikely to reliably perform in the real world; (2) CAT deliberately withheld this information for prospective purchasers.

Count 1—Breach of Express Warranty

90. Plaintiffs and the Class incorporate the allegations set forth above in paragraphs 1 through 89 as if fully set forth herein.

91. As an express warrantor and manufacturer and merchant, CAT had certain obligations under common law and the uniform commercial code to conform the MY2007 CAT Engine and its CRS emission control system to the express warranty.

92. When Plaintiffs and the members of the Class purchased and/or leased their vehicles with MY2007 CAT Engines (either as new vehicles or as used vehicles with remaining warranty coverage), CAT expressly warranted under its Engine Warranty that it would correct any engine defect found within 24 months of the date of delivery to the first user, and cover all reasonable and customary labor needed to correct the defect, as well as reasonable towing and travel expenses.

93. The defect at issue in this litigation was present at the time vehicles equipped with the MY2007 CAT Engines were sold and leased to Plaintiffs and members of the Class.

94. CAT breached its express warranty (and continues to breach the express warranty) because it did not (and has not) corrected the defect with the MY2007 CAT Engines.

95. Pursuant to its express warranty, CAT was obligated to correct any defect in the MY2007 CAT Engines in the vehicles owned or leased by the Plaintiffs and the Class members.

96. Although CAT was obligated to correct the defect with the MY2007 CAT Engine CRS, none of the purported, attempted fixes to the emissions system are adequate under the terms of the Engine Warranty, as they did not cure the defect.

97. CAT and its agent dealers have failed and refused to conform the MY2007 CAT Engines to the express warranty. CAT's conduct, as discussed throughout this Complaint, has voided any attempt to disclaim liability for its actions.

98. Plaintiffs and the members of the Class have performed each and every duty required of them under the terms of the warranty, except as may have been excused or prevented by the conduct of CAT or by operation of law in light of CAT's conduct as described throughout this Complaint.

99. CAT received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, CAT has failed and refused to offer an effective remedy.

100. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by CAT to limit its express warranty in a manner that would exclude or limit coverage for the design defect in the MY2007 CAT Engine and its CRS emission control system would be unconscionable. CAT's warranty is adhesive, and did not permit negotiation, or the inclusion of design defects. CAT possessed superior knowledge of the defective design of its CRS prior to offering the Engines for sale. CAT concealed and did not disclose this defect, and CAT did not remedy the defect prior to sale (or afterward). Any effort to otherwise limit liability for the design defect is null and void.

101. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by CAT to limit its express warranty in a manner that would result in replacing parts into its defectively designed MY2007 CAT Engine causes the warranty to fail its essential purpose and is null and void.

102. Plaintiffs and the Class members have suffered damages caused by CAT's breach of its express warranty and are entitled to recover damages, including but not limited to diminution of value.

DEMAND

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Classes, respectfully request judgment against CAT:

- (a) Certifying the Class and appointing Plaintiffs and their counsel to represent the Classes;
- (b) Ordering CAT to provide notice to the Classes of the MY2007 CAT Engine defects;
- (c) Ordering CAT to promptly repair and/or replace all MY2007 CAT Engine defects free of charge;
- (d) Awarding all permissible damages;
- (e) Awarding pre-judgment and post-judgment interest;
- (f) Awarding statutory damages as permitted by law;
- (g) Awarding attorneys' fees and costs; and
- (h) Awarding such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all issues so triable.

Dated: April 11, 2016

Respectfully submitted,

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