

efficiency versus a six-speed automatic transmission.”³ Accordingly, FCA released the 2014 Jeep Cherokee with “the world’s first nine- speed automatic transmission for a passenger vehicle” and lauded the ZF 9HP Automatic Transmission as a “leading-edge solution to [...] mileage and emissions objectives.”⁴

3. The ZF 9HP Automatic Transmission was supposed to serve as a significant technological advancement from previously employed six-speed automatic transmission, due to its unique 9.8 ratio spread and computer-controlled shifting, which were designed together to allow for better performance and fuel economy, while maintaining the ease of use of a traditional automatic transmission.

4. However, prior to releasing the ZF 9HP Automatic Transmission in its vehicles, FCA confirmed that the transmission was plagued with problems.

5. The Cherokee’s release, originally set for “no later than September” 2013⁵, was plagued with delays due to glitches in “the software that controls how the SUV’s nine-speed transmission interact[s] with its innovative disconnecting drivetrain.”⁶ Chrysler claimed that “[t]he company will not ship vehicles until we are fully satisfied the Cherokee meets customer

³ See Press Kit: 2014 Jeep Cherokee, *All New 2014 Jeep Cherokee: No- compromise Mid-size SUV Sets a New Standard* (Sept. 9, 2013), <http://media.fcanorthamerica.com/newsrelease.do?id=14039&mid=426> (last visited March 13, 2019)

⁴ See AutoBlog.com, *Jeep unveils 9-speed transmission for Cherokee* (Mar. 28, 2013, 2:02PM), <http://www.autoblog.com/2013/03/28/jeep-unveils-9-speed-transmission-for-cherokee/> (last visited March 13, 2019).

⁵ See Left Lane News, *Jeep Cherokee still waiting on transmission fix* (Oct. 11, 2013), <http://www.leftlanenews.com/jeep-cherokee-still-waiting-on-transmission-fix.html> (last visited March 13, 2019).

⁶ See Autoweek.com, *Chrysler CEO vows never to repeat mistakes from Cherokee launch* (Oct. 30, 2013), <http://autoweek.com/article/car-news/chrysler-ceo-vows-never-repeat-mistakes-cherokee-launch> (last visited March 13, 2019).

expectations for performance, refinement and quality.”⁷ “Insiders say the new transmission – which is a ZF design but being built by Chrysler – isn’t shifting as smoothly as intended.”⁸ Sergio Marchionne, CEO of Fiat Chrysler Automobiles, later admitted that the transmission lacked “mature” software at the time of release.⁹

6. In addition to its market delay, on September 24, 2013, it was reported that FCA “was also forced to postpone” media drive events to “further improve powertrain calibrations.”¹⁰

7. After multiple delays, attempted fixes and recalibrations, FCA nevertheless sold the Class Vehicles with the ZF 9H Automatic Transmission. Unfortunately for consumers, FCA knowingly rushed a product to market that was defective and has been unable to repair the Class Vehicles.

8. Ultimately, FCA failed to deliver any vehicles with the ZF 9HP Automatic Transmission that lived up to the promise of a transmission that “shifts through the gears so smoothly that drivers don’t even notice most of the gear changes.”¹¹

9. Traditional automatic transmissions use a set of gears that provide a given number of ratios. The transmission shifts gears to provide the most appropriate ratio for a given situation. Normally, that means lower gears for starting, middle gears for acceleration and passing, and

⁷ See Left Lane News, Jeep Cherokee still waiting on transmission fix (Oct. 11, 2013), <http://www.leftlanenews.com/jeep-cherokee-still-waiting-on-transmission-fix.html> (last visited March 13, 2019).

⁸ *Id.*

⁹ See Automotive News, Another fix for Jeep’s troubled 9-speed (Feb. 2, 2015, 12:01AM), <http://www.autonews.com/article/20150202/OEM01/302029930/another-fix-for-jeeps-troubled-9-speed> (last visited March 13, 2019).

¹⁰ See Left Lane News, *Chrysler Suspends Shift at Jeep Cherokee Plant*, (September 24, 2013, 11:06AM), www.leftlanenews.com/chrysler-suspends-shift-at-jeep-cherokee-plant.html (last visited March 13, 2019).

¹¹ See *Drive: The ZF Magazine*, Feb. 2013, at 29, https://www.zf.com/master/media/en/corporate/m_zf_com/company/download_center/vision/11860_1_54_vision_2_2013_online_deen.pdf.

higher gears for more fuel-efficient cruising. The ZF 9HP Automatic Transmission differs from traditional automatic transmissions in that it employs a 9.8 ratio spread, as opposed to 6, allowing for shorter shifts between gears, keeping the engine speed as low as possible, and contributing to greater fuel-efficiency. Additionally, the ZF 9HP Automatic Transmission borrows fuel-efficient characteristics typically seen in manual transmissions, such as “dog clutches,” which use less power to shift than the friction clutches normally utilized in automatic transmissions. However, in contrast to manual transmissions, the ZF 9HP Automatic Transmission engages the dog clutches with computer software commands from an electronic control unit in order to save space and ensure that the complex transmission actually fits inside the vehicles. An automotive journalist best explains the result of employing the software:

The 9HP’s software on the other hand responds by cutting power initially, then diving as far down the gear-ladder as it can, engaging the dog clutches and then reinstating your throttle command. The result is a somewhat odd delay between the pedal on the floor and the car taking off like a bat out of hell.¹²

10. Despite the initial skepticism towards the performance of the ZF 9HP Automatic Transmission, Sergio Marchionne touted his confidence in the ZF 9HP Automatic Transmission, stating that it “has all the elements that we feel are essential to our front-wheel-drive/all-wheel-drive portfolio”¹³ and that “[i]t is still the most viable solution moving forward.”¹⁴ Further, FCA’s press releases continued to praise the Cherokees’ performance with the newly equipped 9-speed

¹² See The Truth About Cars, ZF’s 9-Speed 9HP Transmission Puts Dog Clutches On The Leash (Feb. 8, 2014), <http://www.thetruthaboutcars.com/2014/02/zfs-9-speed-9hp-transmission-puts-dog-clutches-on-the-leash/> (last visited March 13, 2019).

¹³ See Autoweek.com, Chrysler CEO vows never to repeat mistakes from Cherokee launch (Oct. 30, 2013), <http://autoweek.com/article/car-news/chrysler-ceo-vows-never-repeat-mistakes-cherokee-launch> (last visited July 8, 2015).

¹⁴ See Automotive News, Marchionne commits to 9-speed, says technology keeps evolving (Mar. 30, 2014), <http://www.autonews.com/article/20140330/OEM06/303319976/marchionne-commits-to-9-speed-says-technology-keeps-evolving> (last visited March 13, 2019).

transmission:

The all-new 2014 Jeep Cherokee completely redefines the mid-size SUV segment, delivering legendary Jeep 4x4 capability, improved fuel economy, superior on-road ride and handling, revolutionary design, world-class craftsmanship, clever functionality and versatility, more than 70 safety and security features and user-friendly technology. The Jeep Cherokee delivers unmatched off-road capability while not sacrificing on-road ride and handling, comfort or segment-leading features.¹⁵

And:

The 2015 Jeep Cherokee premium on-road manners and fuel efficiency are a result of a number of efforts by Jeep engineers. Powered by the choice of two new engines mated to a segment-first nine-speed automatic transmission, the all-new Cherokee delivers the power drivers appreciate on the road without sacrificing fuel efficiency. With highway fuel economy ratings of up to 31 mpg and a driving range on a tank of gasoline of nearly 500 miles, the all-new 2015 Jeep Cherokee delivers drivers a no-compromise ownership experience.¹⁶

11. A vehicle equipped with the ZF 9HP Automatic Transmission should function in a manner that the driver expects, i.e. it should start, accelerate, decelerate, and stop at appropriate times while the driver operates the vehicle. In practice, however, FCA's 9-speed transmission operates erratically, causing numerous safety concerns.

12. Specifically, Plaintiff is informed and believes, and based thereon alleges, that the ZF 9HP Automatic Transmission contains one or more design and/or manufacturing defects in that the transmission exhibits rough, delayed, or sudden shifting or failure to shift; grinding or other loud noises during shifting; harsh engagement of gears; sudden or harsh

¹⁵ See Press Kit: 2014 Jeep Cherokee, All New 2014 Jeep Cherokee: No-compromise Mid-size SUV Sets a New Standard (Sept. 9, 2013), <http://www.media.chrysler.com/newsrelease.do?id=14039&mid=426> (last visited March 13, 2019).

¹⁶ See Press Kit: 2015 Jeep Cherokee, 2015 Jeep Cherokee: Most Capable Mid-size SUV Expands Availability of Features Customers Desire for 2015 (Sept. 2, 2014), <http://www.media.chrysler.com/newsrelease.do?&id=15865&mid=426> (last visited March 13, 2019).

accelerations/decelerations; sudden loss of power; premature transmission wear; and transmission failure (the “Transmission Defect”).

13. Based on information and belief acquired through publicly available information, Plaintiff believes that the Transmission Defect stems from the Transmission Control Module (“TCM”) and its software.

14. The Transmission Defect causes unsafe conditions, including, but not limited to, delayed acceleration, abrupt forward propulsion and sudden loss of power, which present a safety hazard because they severely affect the driver’s ability to control the car’s speed, acceleration, and deceleration. As examples, these conditions may make it difficult to safely change lanes, make turns, merge into traffic, accelerate from stop light/sign, and accelerate onto highways/freeways.

15. On information and belief, Defendant’s corporate officers, directors, or managers knew about the Transmission Defect and failed to disclose it to Plaintiff and Class Members, including at the time of sale, lease, and repair.

16. On information and belief, the Class Vehicles utilize the same or substantially identical ZF 9HP Automatic Transmission, and the Transmission Defect is the same for all Class Vehicles.

17. On information and belief, the Transmission Defect also causes premature wear to the ZF 9HP Automatic Transmission and other related components, which may result in premature transmission failure and require expensive repairs, including possible replacement of the transmission and its related components.

18. As a result of the Transmission Defect, with the first 6 months of production, FCA issued several Technical Service Bulletins (“TSBs”), as well as three transmission software updates, to its dealers in the United States, acknowledging defects in the 9HP Automatic

Transmission.

19. However, consumer complaints persisted and FCA continued to issue numerous additional TSBs and transmission software updates through 2017. However, FCA's promises again fell short.

20. On information and belief, consumers continue to experience problems with their vehicles despite the purported fixes, including, but not limited to: rough, delayed, or sudden shifting or failure to shift; grinding or other loud noises during shifting; harsh engagement of gears; sudden or harsh accelerations/decelerations; sudden loss of power; and premature transmission wear.

21. Because FCA will not notify Class Members that the ZF 9HP Automatic Transmission is defective, Plaintiff, Class Members, and members of the general public are subjected to dangerous driving conditions that often occur without warning.

22. The alleged Transmission Defect was inherent in each FCA vehicle equipped with the ZF 9HP Automatic Transmission and was present in each FCA vehicle equipped with the ZF 9HP Automatic transmission at the time of sale.

23. FCA knew about Transmission Defect present in every Class Vehicle, along with the attendant dangerous safety problems, and concealed this information from Plaintiff and Class Members at the time of sale, lease, repair, and thereafter. In fact, instead of repairing the defects in the ZF 9HP Automatic Transmission, FCA either refused to acknowledge the defects' existence or performed repairs that simply masked the defects.

24. If Plaintiff and Class Members had known about these defects at the time of sale or lease, Plaintiff and Class Members would not have purchased or leased the Class Vehicles or would have paid less for them.

25. As a result of their reliance on Defendant's omissions, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the Transmission Defect, Plaintiff and Class Members were harmed and suffered actual damages in that the Class Vehicles' transmission components are substantially certain to fail before their expected useful life has run.

THE PARTIES

Plaintiff Brian Razen

26. Plaintiff Brian Razen ("Razen") is a citizen of Florida and resides in Clermont, Florida.

27. On or around February 13, 2018, Razen purchased a new 2017 Jeep Renegade (VIN: ZACCJABB7HPG11115) from Greenway Dodge/Chrysler, an authorized FCA dealer in Orlando, Florida. Razen's vehicle was equipped with a ZF 9HP Automatic Transmission.

28. Razen purchased his vehicle primarily for personal, family, or household use. FCA manufactured, distributed, advertised, marketed, and warranted the vehicle.

29. Passenger safety and reliability were factors in Razen's decision to purchase his vehicle. Razen reviewed specific features and options for the Jeep Renegade on the internet and with the FCA authorized dealer/salesperson, and test drove a Jeep Renegade prior to his purchase.

30. Had FCA disclosed the Transmission Defect before Razen purchased his vehicle, Razen would have seen such disclosures and been aware of them. Indeed, FCA's omissions were material to Razen. Like all members of the Class, Razen would not have purchased his Class Vehicle, or would have paid less for the vehicle, had he known of the Transmission Defect.

31. In addition, at the time Razen purchased his vehicle, and in purchasing the vehicle, Razen relied on representations from FCA and its authorized dealership that the vehicle was fully

functional, safe, durable, and/or reliable. Razen relied on these representations in purchasing the vehicle and, absent these representations, would not have purchased the vehicle and/or would have paid less for it.

32. In December 2018, Razen experienced the vehicle shifting hard at lower speeds. That same month, while driving at 20 mph in the center lane on I-4 in Orlando, the engine shut off completely. He coasted to the side of the road. He checked the oil and it was a quart low, despite having had an oil change one month prior. He phoned a friend, who met him on the highway with additional engine oil. When he arrived home, he immediately contacted Greenaway Jeep and was told to bring in his car.

33. On or about January 2, 2019, with 42,995 miles on the odometer, Razen took his car into the Greenaway Jeep dealership as he was told to do. He told the service manager that in addition to the engine shut off, the vehicle had been bucking, lurching and jerking a lot with sudden or harsh acceleration. The car was given a complete oil change, for which Razen paid out of pocket \$50.53. The service manager vehicle told Razen to drive the car for 3000 miles and then bring it back in because the oil change was part of an oil consumption test.

34. Over the next 3000 miles, Razen experienced symptoms of the Transmission Defect, including rough, delayed, or sudden shifting, failure to shift, harsh engagement of gears, sudden or harsh accelerations, jerking; bucking, lurching and sudden loss of power.

35. On or around January 14, 2019, after he had driven an additional 3000 miles, Razen brought his vehicle to back to Greenway Jeep to have them check into continuing oil related issues and the continued symptoms of the Transmission Defect. Razen told the technician that the engine was burning oil too fast because it was down two quarts and that he had experienced rough, delayed, or sudden shifting, failure to shift, harsh engagement of gears, sudden or harsh

accelerations, jerking; bucking, lurching and sudden loss of power. For Razen, it felt like he was being kicked in the spine every time the vehicle shifted gears. The technician inspected the vehicle and found that excessive oil was used (“1.5 quarts in 2K miles”). The dealership also performed a “compression and leak down test” and told him that the engine block needed to be replaced. The FCA certified technician replaced the long engine block and released the vehicle to Razen after 10 days. On the same day he picked up the vehicle, Razen experienced bucking, jerking and lurching. He immediately called the dealership. He was told to drive the vehicle for 30 days to allow the transmission to relearn his driving habits. During and after the 30-day period, the same Transmission defect symptoms continued.

36. On Feb 11, 2019, Razen took the vehicle to Posner Park Chrysler Jeep and Dodge in Davenport, FL. As stated to the invoice, “CUSTOMER STATES THE TRANSMISSION IS JERKING REALLY HARD AND LURCHING FORWARD INTERMITTENTLY Happens more often in stop and go traffic.” He was told that the transmission was not flashed and new updates were not installed when the engine was replaced at Greenway Jeep. Posner Parkr eflashed the transmission and installed new updates. Razen was told to drive the car for 30 to 60 days to allow it to relearn his driving habits. During and after that 60-day period, the vehicle was still lurching and shifting hard.

37. On April 25, 2019, Razen took his vehicle back to Posner. The invoice reads: “Customer states it is lurching forward and shifting hard in low gears.” The dealership said that they test drove the vehicle and that it drove normally. The dealership told Razen to contact the Chrysler customer complaint department.

38. Because Razen fears for his safety when he drives his vehicle, he drives it only to and from work. Compared to the 43,000 miles he drove the car during his first year of ownership,

he has driven the car only 10,000 miles in the last year, his second year of ownership. He refuses to drive the car for anything other than the necessary purpose of getting to and from work.

39. Despite providing FCA and its authorized dealer with more than one opportunity to repair his vehicle, Razen has continued to experience the Transmission Defect, including, but not limited to rough, delayed, or sudden shifting, failure to shift, harsh engagement of gears, sudden or harsh accelerations, jerking; bucking, lurching and sudden loss of power. At all times, Razen, like all Class Members, has driven his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

40. Razen and each other Class member's ascertainable losses include, but are not limited to, out-of-pocket losses by overpaying for the vehicles at the time of purchase, decreased performance of the vehicles and diminished value of the vehicles. Accordingly, Razen brings claims individually and as a representative of the Class.

Defendant

41. Defendant FCA US LLC is a limited liability company organized and in existence under the laws of the State of Delaware and registered to do business in the State of Florida as well as other states. FCA US LLC's Corporate Headquarters are located at 1000 Chrysler Drive, Auburn Hills, Michigan 48326. FCA US LLC designs, manufactures, markets, distributes, services, repairs, sells, and leases passenger vehicles, including the Class Vehicles, nationwide. FCA US LLC is the warrantor and distributor of the Class Vehicles in the United States. FCA US LLC's sole member is FCA North America Holdings LLC, a Delaware limited liability company, with its principal place of business located at 1000 Chrysler Drive, Auburn Hills, Michigan 48326. FCA North America Holdings LLC's sole member is Fiat Chrysler Automobiles N.V., which was incorporated as a public limited liability company (naamloze vennootschap) under the laws of the

Netherlands. Its principal office is located at 25 St. James's Street, London SW1A 1HA, United Kingdom.

JURISDICTION

42. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2). Personal jurisdiction over FCA is proper, because FCA has purposefully availed itself of the privilege of conducting business activities in Florida, and throughout the United States, including, but not limited to, designing, marketing, distributing, and/or selling Class Vehicles to Plaintiff and prospective class members.

VENUE

43. Defendant FCA US LLC, through its business of distributing, selling, and leasing the Class Vehicles, has established sufficient contacts in this district such that personal jurisdiction is appropriate. Defendant is deemed to reside in this district pursuant to 28 U.S.C. § 1391(c)-(d).

44. In addition, a substantial part of the events or omissions giving rise to these claims took place in this district. Plaintiff Razen purchased his 2017 Jeep Renegade, which is the subject of this action, from Greenway Dodge/Chrysler, an authorized FCA dealer in Florida. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

45. FCA has designed, manufactured, distributed, sold, and leased the Class Vehicles. FCA has sold, directly or indirectly, through dealers and other retail outlets, thousands of Class Vehicles¹⁷ equipped with the ZF 9HP Automatic Transmission in the United States.

46. FCA designed and marketed the Class Vehicles with new ZF 9HP Automatic

¹⁷ On information and belief, these vehicles beginning in Model Year 2016 include, but are not limited to, the following FCA models: 2016-2019 Jeep Cherokee, 2016-2019 Jeep Renegade, 2016-2018 Chrysler 200, and 2016-2019 Promaster City.

Transmissions as “a critical part of [its] strategy to meet fuel economy requirements over the next several years,”¹⁸ and promised that the new transmission would deliver “numerous benefits customers will appreciate, including aggressive launches, smooth power delivery at highway speeds and improved fuel efficiency versus a six-speed automatic transmission.”¹⁹

47. In fact, prior to even releasing the ZF 9HP Automatic Transmission in its vehicles, FCA confirmed that it was plagued with problems. In addition to its market delay, on September 24, 2013, it was reported that FCA “was also forced to postpone” media drive events to “further improve powertrain calibrations.”²⁰

48. Unfortunately, FCA failed to deliver any vehicles with ZF 9HP Automatic Transmissions that lived up to the promise of a transmission that “shifts through the gears so smoothly that drivers don’t even notice most of the gear changes.”²¹ The Cherokee’s release, originally set for “no later than September” 2013,²² was plagued with delays due to glitches in “the software that controls how the SUV’s nine-speed transmission interact[s] with its innovative disconnecting drivetrain.”²³ Chrysler claimed that “[t]he company will not ship vehicles until we

¹⁸ See FCA Corporate News, Chrysler Group Plans to Invest Nearly \$20 Million in Toledo Machining Plant (April 26, 2013), <http://media.chrysler.com/newsrelease.do?id=14171&mid=2> (last visited March 13, 2019).

¹⁹ See Press Kit: 2014 Jeep Cherokee, All New 2014 Jeep Cherokee: No-compromise Mid-size SUV Sets a New Standard (Sept. 9, 2013), <http://www.media.chrysler.com/newsrelease.do?id=14039&mid=426> (last visited March 13, 2019).

²⁰ See Left Lane News, Chrysler Suspends Shift at Jeep Cherokee Plant, (September 24, 2013, 11:06AM), www.leftlanenews.com/chrysler-suspends-shift-at-jeep-cherokee-plant.html (last visited March 13, 2019).

²¹ See Drive: The ZF Magazine, Feb. 2013, at 29, available at https://www.zf.com/master/media/en/corporate/m_zf_com/company/download_center/vision/11860_1_54_vision_2_2013_online_deen.pdf.

²² See Left Lane News, Jeep Cherokee still waiting on transmission fix (Oct. 11, 2013), <http://www.leftlanenews.com/jeep-cherokee-still-waiting-on-transmission-fix.html> (last visited March 13, 2019).

²³ See Autoweek, Chrysler CEO vows never to repeat mistakes from Cherokee launch (Oct. 30,

are fully satisfied the Cherokee meets customer expectations for performance, refinement and quality.”²⁴ “Insiders say the new transmission which is a ZF design but being built by Chrysler – isn’t shifting as smoothly as intended.”²⁵ Sergio Marchionne, CEO of Fiat Chrysler Automobiles, later admitted that the transmission lacked “mature” software at the time of release.²⁶

49. After multiple delays, attempted fixes and recalibrations, FCA nevertheless sold the Class Vehicles with the ZF 9H Automatic Transmission. Unfortunately for consumers, FCA knowingly rushed a product to market that was defective and has been unable to repair the Class Vehicles.

50. Beginning soon after release, through consumer complaints, dealership repair orders, and data regarding the FCA ZF 9HP Automatic Transmission, among other internal sources, Defendant knew or should have known that the Class Vehicles and the ZF 9HP Automatic Transmission contained one or more design and/or manufacturing defects that adversely affect the drivability of the Class Vehicles and cause safety hazards. Nevertheless, Defendant has actively concealed and failed to disclose this defect to Plaintiff and Class Members at the time of purchase or lease and thereafter.

51. On information and belief, Defendant’s corporate officers, directors, or managers knew about the Transmission Defect and failed to disclose it to Plaintiff and Class Members, at the time of sale, lease, repair, and thereafter.

2013), <http://autoweek.com/article/carnews/chryslerceovowsneverrepeatmistakesCherokeeLaunch> (last visited March 13, 2019).

²⁴ See Left Lane News, Jeep Cherokee still waiting on transmission fix (Oct. 11, 2013, 1:08PM) <http://www.leftlanenews.com/jeep-cherokee-still-waiting-on-transmission-fix.html> (last visited March 13, 2019).

²⁵ *Id.*

²⁶ See Automotive News, Another fix for Jeep’s troubled 9-speed (Feb. 2, 2015, 12:01AM), <http://www.autonews.com/article/20150202/OEM01/302029930/another-fix-for-jeeps-troubled-9-speed> (last visited March 13, 2019)

52. A vehicle equipped with the ZF 9HP Automatic Transmission should function in a manner that the driver expects, i.e. it should start, accelerate, decelerate, and stop at appropriate times while the driver operates the vehicle. In practice, however, FCA's 9-speed transmission behaves erratically, causing numerous safety concerns.

53. Dating back to at least October 2013, FCA was aware of the defects of the ZF 9HP Automatic Transmissions. FCA, however, failed and refused to disclose these known defects to consumers. As a result of this failure, Plaintiff and Class Members have been damaged.

The Transmission Defect Poses an Unreasonable Safety Hazard

54. The Transmission Defect causes unsafe conditions in the Class Vehicles, including, but not limited to, the vehicles' inability to properly respond to driver input, such as acceleration and deceleration attempts, thereby rendering the driver unable to speed up or slow down appropriately while the vehicle is in motion. These conditions present a safety hazard, because they can severely affect the driver's ability to control the car's speed, acceleration, and deceleration. For example, these conditions make it difficult to safely change lanes, appropriately accelerate from a stop, merge into traffic, or make turns.

55. Complaints that Class Vehicles' owners and lessees filed with the National Highway Traffic Safety Administration ("NHTSA") demonstrate that the defect is widespread and dangerous and that it manifests without warning. The complaints also indicate Defendant's awareness of the problems with the transmission and how potentially dangerous the defect is for consumers. Attached hereto as **Exhibit A** is just a sampling of the over 300 safety-related complaints that describe the Transmission Defect in Class Vehicles, including, but not limited to, 2016-2017 Jeep Cherokee, 2016 Chrysler 200, and 2016 Jeep Renegade vehicles -(spelling and grammar mistakes remain as found in the original) (Safecar.gov, *Search for Complaints* (July 2,

2015), <http://www-odi.nhtsa.dot.gov/complaints/>).

56. Additionally, in November 2018, FCA issued a Safety Recall (Recall Number UB2/NHTSA Recall Number 18V731) relating to the Fuel Pump Module in Jeep Renegades, acknowledging that “a defect, which relates to motor vehicle safety, exists in certain 2017 Jeep Renegade vehicles.” In the notice of safety recall to consumers, FCA reported that “[a] loss of fuel pressure may lead to an engine stall resulting in a sudden loss of motive power, which may cause a vehicle crash without prior warning.” FCA further acknowledged that “[t]he remedy for this condition is not currently available.”

57. Also, complaints posted by consumers in internet forums demonstrate that the defect is widespread and dangerous and that it manifests without warning. The complaints also indicate Defendant’s awareness of the problems with the transmission and how potentially dangerous the defect is for consumers. These complaints are listed on **Exhibit B** attached hereto.

58. The Transmission Defect poses an unreasonable safety risk for Class Members and other drivers and pedestrians. A vehicle’s responsiveness to driver input, such as acceleration and deceleration, and the ability of a vehicle’s transmission to perform properly are critical to a vehicle’s safe operation. A defect that causes one or more of these negative characteristics poses a safety hazard to the general public and increases the risk of automobile accidents.

FCA Has Exclusive Knowledge of the Transmission Defect

59. FCA had superior and exclusive knowledge of the Transmission Defect and knew or should have known that the defect was not known or reasonably discoverable by Plaintiff and Class Members before they purchased or leased the Class Vehicles.

60. Plaintiff is informed and believes, and based thereon alleges, that before Plaintiff purchased his Class Vehicles, and since at least October 2013, FCA knew about the Transmission

Defect through sources not available to consumers, including the following: pre-release testing data; early consumer complaints about the Transmission Defect to Defendant's dealers who are its agents for vehicle repairs; warranty claims data related to the defect; aggregate data from FCA's dealers and reports to FCA's Service Technical Assistance Resource ("STAR") Center, its engineer/technical team; consumer complaints to the NHTSA and resulting notice from NHTSA; early consumer complaints on websites and internet forums; dealership repair orders; testing conducted in response to owner or lessee complaints; technical service bulletins ("TSBs") applicable to the Class Vehicles; and other internal sources of aggregate information about the problem.

61. Further, even prior to bringing the Class Vehicles to market, FCA at least twice delayed releasing the vehicles in order to address problems with the ZF 9H Automatic Transmission for symptoms substantially similar, if not identical, to the Transmission Defect.

62. As a result of the Transmission Defect, FCA has issued over 12 Technical Service Bulletins ("TSBs"), as well as three transmission software updates, to its dealers in the United States, acknowledging defects in the ZF 9HP Automatic Transmission. It has also issued a safety recall for the Jeep Renegade that indicates there is no known fix for the defect.

63. For example, FCA issued TSB #SB-21-013-13 on or around November 14, 2013, to its dealers, covering the 2014 Jeep Cherokee, and informed them of the procedure to be followed in the event customers "indicate that their transmission shift quality does not meet their expectations" and the "New Vehicle Preparation 'Road Test'" identifies poor shift quality.

64. Further, FCA issued TSB #SB-21-014-13 on or around December 19, 2013, to its dealers, covering the 2014 Jeep Cherokee, and informed them that "SOME JEEPS, WITH NEW SOFTWARE ROBUSTNESS IMPROVEMENTS, [are] EXPERIENCING INCONSISTENT

AND/OR HARSH1-2 or 2-3 UPSHIFTS.”

65. Additionally, FCA’s TSB #21-018-14 from or around May 15, 2014, which supersedes the December 2013 TSB (#SB-21-014-13), addressed customer complaints regarding the 2014 Jeep Cherokee transmission’s poor shifting and included a “five-minute software reset” and, in some cases, a 78-minute “adaptive drive learn” test performed by the service technician to ensure appropriate shifting.²⁷ A Chrysler spokesperson told Automotive News that the software update was in response to “customer feedback” and “to improve satisfaction.”²⁸ Despite issuing three successive Technical Service Bulletins and two software updates within the first six months of production, FCA CEO Sergio Marchionne assured consumers in May 2014 that “he was not concerned about the quality of the nine-speed automatic transmission” and further promised that “[i]t will get better six months from now, trust me.”²⁹

66. However, consumer complaints persisted and FCA’s promises again fell short. It then issued TSB #81-016-1053 on or around October 1, 2014, covering the 2014-2015 Jeep Cherokees and 2015 Chrysler 200, informing dealers that the “TRANSMISSION MAY NOT ALLOW THE TRANSAXLE TO SHIFT GEAR DUE TO TRANSMISSION CONTROL MODULE SOFTWARE.”

67. In February 2015, FCA issued TSB #21-008-15, covering the 2014-2015 Jeep Cherokees and 2015 Chrysler 200, providing to dealers “INFORMATION REGARDING AN ISSUE, ON SOME VEHICLES, WHEREBY 5-4 DOWNSHIFTING, IS LESS THAN DESIRED AND MALFUNCTION INDICATOR LAMP (MIL) WILL ILLUMINATE AND REMOVING,

²⁷ See Automotive News, Jeep 9-speed needs a reset again (May 26, 2015), <http://www.autonews.com/article/20140526/OEM06/305269979/jeep-9-speed-needs-a-reset-again> (last visited July 8, 2015).

²⁸ *Id.*

²⁹ *Id.*

DISASSEMBLING AND REPLACING C-CLUTCH SNAP RING AND TRANSMISSION.”³⁰

68. Additionally, in or around February 2015, FCA released its third transmission software update for vehicles equipped with the ZF 9HP Automatic Transmission in response to consumer complaints reporting conditions such as “sudden lunges from unexpected downshifts, a lack of kickdown upon entering highways, front-axle vibration in low gears, and complete failures in which the transmission shifts into neutral while driving and lights up the dash with warning lights.”³¹

69. FCA issued TSB #21-015-15 on or around March 4, 2015, relating to the above-mentioned software update. FCA re-issued this TSB on or around April 3, 2015 as TSB#21-015-15 REV. A with a more detailed and different diagnostic and repair procedure, and again on or around December 24, 2015 as TSB#21-07-015, with more detailed instructions depending on the type of vehicle being repaired.

70. On or around June 21, 2016, FCA issued TSB#03-003-16, covering the 2014-2016 Jeep Cherokees and the 2015-2016 Chrysler 200s, relating to yet another update to a portion of the above-mentioned software, the Drivetrain Control Module, to address “a constant high pitched whine coming from rear axle area.”

71. Additionally, FCA has issued several versions of TSB#21-001-16 regarding reprogramming updates to the Transmission Control Module for certain 2016 Jeep Cherokees.

³⁰ FCA subsequently re-issued TSB #21-008-15 twice, on or around February 7, 2015 as TSB#21-008-15 REV. A and on or around August 15, 2015 as TSB#21-008-15 REV. B. TSB#21-008-15 REV. A reiterated that the bulletin applied to vehicles with VINs on specific lists, and TSB#21-008-15 REV. B added or changed some of the parts to be used in the service repair.

³¹ See Car and Driver, Holy Shift: ZF 9-speed Automatic Problems Mount, Chrysler Releases Third Software Update for Jeep Cherokee (Feb. 4, 2015, 1:55PM), <https://www.caranddriver.com/news/a15356669/holy-shift-zf-9-speed-automatic-problems-mount-chrysler-releases-third-software-update-for-jeep-cherokee/> (last visited March 13, 2019).

The TSBs were issued to address one or more of the following conditions:

- Less than desired low speed drivability and response to accelerator pedal input.
- Less than desired 5-4 coast down transmission shift quality.
- Less than desired transmission shift quality.
- Less than optimal transmission shift timing, driving up and down hills.
- Less than desired Engine Stop/Start re-engagement or smoothness.
- Transmission is slow to upshift after releasing the accelerator pedal.

72. TSB#21-001-16 was re-issued on or around January 16, 2016 as TSB#21-001-16 REV. A to include a specific sales code for one of the applicable engines. The TSB was re-issued on or around April 1, 2016 as TSB#21-001-16 REV. B to include more vehicles, encompassing 2016 Jeep Cherokees built on or before February 29, 2016, whereas the previous TSB only applied to 2016 Jeep Cherokees with a 2.4L Engine built on or before September 22, 2015 or with a 3.2L Engine built on or before October 2, 2015. The TSB was re-issued for a second time on or around May 10, 2016 as TSB#21-001-16 REV. C to include 2016 Jeep Cherokees with a 3.2L Engine built on or before April 25, 2016.

73. On or around November 29, 2016, FCA issued TSB#21-039-16, covering the 2017 Jeep Cherokee, informing dealers that the “[c]ustomers may experience a Malfunction Indicator Lamp (MIL) illumination” and “[a] longer than normal delay during a shift from reverse to drive selection.” TSB#21-039-16 contained instructions to dealers to reprogram the Transmission Control Module with another software update.

74. The delays and other problems in shifting continued to persist throughout 2017, as FCA issued TSB#21-006-17 REV. A on or around June 17, 2017 and TSB#52 on or around September 17, 2017 regarding reprogramming instructions for the Transmission Control Module

in the 2017 Jeep Cherokee.

75. In TSB#21-006-17 REV. A, in addition to reporting the above-mentioned conditions of a “Malfunction Indicator Lamp (MIL) illumination” and “longer than normal delay during a shift from reverse to drive selection[,]” FCA informed dealers of the following conditions: “During a limp mode condition, the transmission remains in a fixed gear” and “5-4 downshift hesitation.”

76. In TSB#52, a Customer Satisfaction Notification, FCA informed dealers that:

The vehicle speed on about 24,000 of the above vehicles maybe limited if certain conditions are met. This can occur if the vehicle is brought to a full stop and the gear shifter is immediately moved from “DRIVE” to “PARK” and then the key position is changed from “RUN” to “ACC”. This action will cause the transmission to be limited to one gear and a maximum speed of 30 – 45 mph and will illuminate the Malfunction Indicator Lamp (MIL) on the instrument cluster and will set P0810 fault code.

77. FCA is aware of the defect and its effects, as indicated by the November 2018 Safety Recall (Recall Number UB2/NHTSA Recall Number 18V731) relating to the Fuel Pump Module acknowledging that “a defect, which relates to motor vehicle safety, exists in certain 2017 Jeep Renegade vehicles.” In the notice of safety recall to consumers, FCA reported that “[a] loss of fuel pressure may lead to an engine stall resulting in a sudden loss of motive power, which may cause a vehicle crash without prior warning.” FCA further acknowledged that “[t]he remedy for this condition is not currently available.”

78. The alleged Transmission Defect was inherent in each FCA vehicle equipped with the ZF 9HP Automatic Transmission and was present in each FCA vehicle equipped with the ZF 9HP Automatic Transmission at the time of sale.

79. The existence of the Transmission Defect is a material fact that a reasonable consumer would consider when deciding whether to purchase or lease an FCA vehicle that was equipped with the ZF 9HP Automatic Transmission. Had Plaintiff and other Class Members

known that the Class Vehicles were equipped with defective transmissions, they would not have purchased or leased the Class Vehicles equipped with the ZF 9HP Automatic Transmissions or would have paid less for them.

80. Reasonable consumers, like Plaintiff, reasonably expect that a vehicle's transmission is safe, will function in a manner that will not pose a safety hazard, and is free from defects. Plaintiff and Class Members further reasonably expect that FCA will not sell or lease vehicles with known safety defects, such as the Transmission Defect, and will disclose any such defects to its consumers when it learns of them. They did not expect FCA to fail to disclose the Transmission Defect to them and to continually deny the defect.

FCA Has Actively Concealed the Transmission Defect

81. While FCA has been fully aware of the Transmission Defect in the Class Vehicles, it actively concealed the existence and nature of the defect from Plaintiff and Class Members at the time of purchase, lease, repair, and thereafter. Specifically, FCA failed to disclose or actively concealed at and after the time of purchase, lease, or repair:

- a) any and all known material defects or material nonconformity of the Class Vehicles, including the defects relating to the ZF 9HP Automatic Transmission;
- b) that the Class Vehicles, including their ZF 9HP Automatic Transmissions, were not in good in working order, were defective, and were not fit for their intended purposes; and
- c) that the Class Vehicles and their ZF 9HP Automatic Transmissions were defective, despite the fact that FCA learned of such defects through alarming failure rates, customer complaints, and other internal sources, as early as November 2013.

82. In fact, even before releasing the Class Vehicles on the market, FCA knew about

the Transmission Defect and delayed the vehicle's release because of it. Nevertheless, FCA never disclosed the Transmission Defect to Class Members.

83. As a result of the Transmission Defect, FCA was inundated with complaints regarding the ZF 9HP Automatic Transmission. And, as mentioned above, FCA issued over 12 Technical Service Bulletins ("TSBs") and three transmission software updates to its dealers in the United States, and a safety recall for the Jeep Renegade that indicates there is no known remedy for the defect, thus internally acknowledging defects in the ZF 9HP Automatic Transmission.

84. On information and belief, the TBSs and software upgrades issued by FCA were ineffective at addressing the Transmission Defect.

85. When consumers present the Class Vehicles to authorized FCA dealers for repair of the transmission, rather than repair the problem under warranty, FCA dealers either inform consumers that their vehicles are functioning properly, or "as designed," or conduct repairs or software updates that merely mask the defect.

86. To this day, FCA still has not notified Plaintiff and Class Members that the Class Vehicles suffer from a systemic defect that causes the transmission to malfunction.

CLASS ACTION ALLEGATIONS

87. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly situated as members of the proposed Class and Sub-Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and/or 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

88. The Class and Sub-Class are defined as:

Class: All individuals residing in the United States of America, including its territories,

who purchased or leased any FCA vehicle beginning in Model Year 2016 equipped with a ZF 9HP Automatic Transmission.

Florida Sub-Class: All members of the Class who purchased or leased their vehicles in the State of Florida.

89. Excluded from the Class and Sub-Class are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-Class should be expanded or otherwise modified.

90. There is a well-defined community of interest in the litigation and the Class and Sub-Class are readily ascertainable.

91. Numerosity: Although the exact number of prospective class members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of prospective class members' claims in a single action will provide substantial benefits to all parties and to the Court. The prospective class members are readily identifiable from information and records in Defendant's possession, custody, or control, as well as from records kept by the departments of motor vehicles of the various states.

92. Typicality: Plaintiff's claims are typical of the claims of the all prospective class members in that Plaintiff and the prospective class members purchased and leased a Class Vehicle designed, manufactured, and distributed by FCA and equipped with a defective ZF 9HP Automatic

Transmission. Plaintiff and all prospective class members have been damaged by Defendant's misconduct in that the Class Vehicles' transmission components are substantially certain to fail before their expected useful life has run and Class Members have incurred or will incur the cost of repairing or replacing the defective transmission. Furthermore, the factual bases of FCA's misconduct are common to all prospective class members and represent a common thread resulting in injury to all prospective class members.

93. Commonality: There are numerous questions of law and fact common to Plaintiff and the prospective class members that predominate over any question affecting individual prospective class members. These common legal and factual issues include the following:

- a) Whether the ZF 9HP Automatic Transmission in the Class Vehicles is defective;
- b) Whether the Transmission Defect constitute an unreasonable safety risk;
- c) Whether and when Defendant knew about the Transmission Defect;
- d) Whether the Transmission Defect constitutes a material fact;
- e) Whether Defendant has a duty to disclose its knowledge of the Transmission Defect to Plaintiff and prospective class members;
- f) Whether Plaintiff and the prospective class members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;
- g) Whether Defendant knew or reasonably should have known of the Transmission Defect before selling and leasing Class Vehicles to prospective class members;
- h) Whether Defendant should be declared financially responsible for notifying all prospective class members of Transmission Defect and fir expenses of repairing the Transmission Defect;
- i) Whether Defendant is obligated to inform prospective class members of their right

to seek reimbursement for having paid to diagnose, repair, or replace the defective ZF 9HP Automatic Transmission; and

- j) Whether Defendant breached the implied warranty of merchantability or pursuant to F.S. §§ 672.314.

94. Adequate Representation: Plaintiff will fairly and adequately protect prospective class members' interests. Plaintiff has retained attorneys experienced in prosecuting class actions, including consumer and product defect class actions, and Plaintiff intends to prosecute this action vigorously.

95. Predominance and Superiority: Plaintiff and the Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages, and Defendant's misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants and will promote consistency and efficiency of adjudication.

96. In the alternative, the Class may be certified because:

- a) The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class

- Members, which would establish incompatible standards of conduct for Defendant;
- b) the prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class Members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
 - c) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

FIRST CAUSE OF ACTION

(Violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*)

97. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 96 of this Complaint.

98. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Florida Sub-Class.

99. Plaintiff and Class Members are “consumers” as defined by Florida Statute §501.203(7), and the subject transactions are “trade or commerce” as defined by Florida Statute §501.203(8).

100. Defendant manufactures Class Vehicles, which are “goods” within the meaning of FDUTPA.

101. FDUTPA was enacted to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

102. For the reasons discussed herein, Defendant violated and continues to violate

FDUTPA by engaging in the herein described unconscionable, deceptive, unfair acts or practices proscribed by Florida Statute §501.201, *et seq.* Defendant's omissions and practices described herein were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment. By failing to disclose and concealing the defective nature of the transmissions from Plaintiff and prospective Class Members, Defendant violated FDUTPA, as it represented that the Class Vehicles and their transmissions had characteristics and benefits that they do not have, and represented that the Class Vehicles and their transmissions were of a particular standard, quality, or grade when they were of another.

103. Defendant's unfair and deceptive acts or practices occurred repeatedly in Defendant's trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

104. Defendant knew that the Class Vehicles and their transmissions suffered from an inherent defect and were not suitable for their intended use.

105. Defendant was under a duty to Plaintiff and Class Members to disclose the defective nature of the transmissions and/or the associated repair costs because:

- a) Defendant was in a superior position to know the true state of facts about the safety defect in the Class Vehicles' transmissions;
- b) Plaintiff and Class Members could not reasonably have been expected to learn or discover that their transmissions had a dangerous safety defect until it manifested; and
- c) Defendant knew that Plaintiff and Class Members could not reasonably have been expected to learn of or discover the safety defect.

106. In failing to disclose the defective nature of the transmissions, Defendant

knowingly and intentionally concealed material facts and breached its duty not to do so.

107. The facts about the Transmission Defect that the Defendant concealed from, or failed to disclose to, Plaintiff and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Class Vehicles or pay less. Had Plaintiff and Class Members known that the Class Vehicles' transmissions were defective, they would not have purchased or leased the Class Vehicles or would have paid less for them.

108. Plaintiff and Class Members are reasonable consumers who do not expect the transmissions installed in their vehicles to exhibit problems such as: rough, delayed, or sudden shifting or failure to shift; grinding or other loud noises during shifting; harsh engagement of gears; sudden or harsh accelerations/decelerations; sudden loss of power; premature transmission wear; and eventually, transmission failure. This is the reasonable and objective consumer expectation relating to vehicle transmissions.

109. As a result of Defendant's conduct, Plaintiff and Class Members were harmed and suffered actual damages in that, on information and belief, the Class Vehicles experienced and may continue to experience problems such as: rough, delayed, or sudden shifting or failure to shift; grinding or other loud noises during shifting; harsh engagement of gears; sudden or harsh accelerations/decelerations; sudden loss of power; premature transmission wear; and eventually, transmission failure.

110. As a result of their reliance on Defendant's omissions, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the Transmission Defect, Plaintiff and Class Members were harmed and suffered actual damages in that the Class Vehicles' transmission components are

substantially certain to fail before their expected useful life has run and Class Members have incurred or will incur the cost of repairing or replacing the defective transmission.

111. As a direct and proximate result of Defendant's unfair or deceptive acts or practices alleged herein, Plaintiff and Class Members suffered and will continue to suffer actual damages and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial. In addition, Plaintiff and the putative Class seek equitable and injunctive relief against Defendant on terms that the Court considers reasonable, and reasonable attorneys' fees.

SECOND CAUSE OF ACTION

(Breach of Implied Warranty)

112. Plaintiff incorporates by reference the allegations contained in the paragraphs 1 to 96 of this Complaint.

113. Plaintiff brings this cause of action against Defendant on behalf of themselves and on behalf of the members of the Class and the Florida Sub-Class.

114. At all relevant times, Defendant was the manufacturer, distributor, warrantor, and/or seller of the Class Vehicles.

115. Defendant provided Plaintiff and Class Members with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles and their transmissions suffered from an inherent defect at the time of sale and thereafter.

116. Defendant has been afforded a reasonable opportunity to cure its breach, including when Plaintiff and Class Members brought their vehicles in for diagnoses and repair of the

transmission.

117. Because Plaintiff purchased his vehicle from an authorized FCA dealer, Plaintiff is in privity with FCA since (1) an agency relationship establishes privity for purposes of the breach of implied warranty claims and (2) privity is not required where plaintiffs are intended third-party beneficiaries of a defendant's implied warranties.

118. As a result of Defendant's breach of the applicable implied warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles.

119. Defendant's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use.

THIRD CAUSE OF ACTION

(Breach of Warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2303 *et seq.*)

120. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 96 of this Complaint.

121. Plaintiff brings this cause of action on behalf of themselves and on behalf of the Class or, in the alternative, on behalf of the Florida Sub-Class.

122. The Class Vehicles are a "consumer product" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

123. Plaintiff and Class Members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

124. Defendant FCA US LLC is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

125. Defendant's express warranty is a "written warranty" within the meaning of the

Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6).

126. FCA provided all purchasers and lessees of the Class Vehicles with a New Vehicle Basic Limited Warranty and a Powertrain Limited Warranty. In this Basic Limited Warranty, FCA expressly warranted that it would “**cover[] . . . all parts and labor needed to repair any item on [the] vehicle** when it left the manufacturing plant that is defective in material, workmanship or factory preparation.” FCA promised to cover “any item on [the] vehicle” with the exception of tires and unwired headphones under its Basic Limited Warranty, for “36 months from the date it begins or for 36,000 miles on the odometer, whichever occurs first.”

127. Furthermore, under the Powertrain Limited Warranty, FCA expressly warranted that it would “**cover the costs of all parts and labor needed to repair a powertrain component** listed in [the] section . . . below that is defective.” FCA promised to cover listed powertrain components under its Powertrain Limited Warranty, including the transmission and transmission control module “for up to 5 years or 100,000 miles on the odometer, whichever occurs first.”

128. On information and belief, Defendant breached the express warranty by purporting to repair the transmission and its component parts by replacing the defective or damaged transmission components with the same defective components and/or instituting temporary fixes, on information and belief, to ensure that the Transmission Defect manifests outside of the Class Vehicles’ express warranty period.

129. Furthermore, Defendant impliedly warranted that the Class Vehicles were of merchantable quality and fit for such use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their transmissions that were manufactured, supplied, distributed, and/or sold by FCA were safe and reliable for providing transportation; and (ii) a warranty that the Class Vehicles and their transmissions would be fit for their intended use while

the Class Vehicles were being operated.

130. Contrary to the applicable implied warranties, the Class Vehicles and their transmissions at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff and Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles are defective, including, but not limited to, the defective design of their transmissions.

131. Defendant's breach of express and implied warranties has deprived Plaintiff and Class Members of the benefit of their bargain.

132. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum or value of \$25,000. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

133. Defendant has been afforded a reasonable opportunity to cure its breach, including when Plaintiff and Class Members brought their vehicles in for diagnoses and repair of the transmission.

134. As a direct and proximate cause of Defendant's breach of express and implied warranties, Plaintiff and Class Members sustained damages and other losses in an amount to be determined at trial. Defendant's conduct damaged Plaintiff and Class Members, who are entitled to recover actual damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, and/or other relief as appropriate.

135. Additionally, FCA breached the express warranty by performing illusory repairs. Rather than repairing the vehicles pursuant to the express warranty, FCA falsely informed Class Members that there was no problem with their vehicles, performed ineffective software updates,

or replaced defective components in the ZF 9HP Automatic Transmissions with equally defective components, without actually repairing the vehicles.

136. As a result of Defendant's violations of the Magnuson-Moss Warranty Act as alleged herein, Plaintiff and Class Members have incurred damages.

FOURTH CAUSE OF ACTION

(For Breach of Express Warranty)

137. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

138. Plaintiff brings this cause of action on behalf of himself and on behalf of the Class and the Florida Sub-Class.

139. As a result of Defendant's breach of the applicable express warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the Transmission Defect, Plaintiff and Class Members were harmed and suffered actual damages in that the Class Vehicles' transmissions are substantially certain to fail before their expected useful life has run.

140. Defendant provided all purchasers and lessees of the Class Vehicles with the express warranty described herein, which became a material part of the bargain.

141. Defendant manufactured and/or installed the transmission and its component parts in the Class Vehicles, and the transmission and its component parts are covered by the express warranty.

142. FCA provided all purchasers and lessees of the Class Vehicles with a New Vehicle Basic Limited Warranty and a Powertrain Limited Warranty. In this Basic Limited Warranty, FCA expressly warranted that it would "**cover[] . . . all parts and labor needed to repair any item on**

[the] vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation.” FCA promised to cover “any item on **[the] vehicle**” with the exception of tires and unwired headphones under its Basic Limited Warranty, for “36 months from the date it begins or for 36,000 miles on the odometer, whichever occurs first.”

143. Furthermore, under the Powertrain Limited Warranty, FCA expressly warranted that it would “**cover[] . . . the costs of all parts and labor needed to repair a powertrain component** listed in **[the] section . . . below that is defective.**” FCA promised to cover listed powertrain components under its Powertrain Limited Warranty, including the transmission and transmission control module, “for up to 5 years or 100,000 miles on the odometer, whichever occurs first.”

144. On information and belief, Defendant breached the express warranty by purporting to repair the transmission and its component parts by replacing the defective or damaged transmission components with the same defective components and/or instituting temporary fixes, on information and belief, to ensure that the Transmission Defect manifests outside of the Class Vehicles’ express warranty period.

145. Plaintiff was not required to notify FCA of the breach and/or was not required to do so because affording FCA a reasonable opportunity to cure its breach of written warranty would have been futile. Defendant was also on notice of the defect from the complaints and service requests it received from Class Members, from repairs and/or replacements of the transmission or a component thereof, and through other internal sources.

146. Further, Defendant was notified of the defect and has been afforded a reasonable opportunity to cure its breach, including when Plaintiff and Class Members brought their vehicles in for diagnoses and repair of the transmission.

147. As a direct and proximate cause of Defendant's breach, Plaintiff and Class Members suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, Plaintiff and Class Members either have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

148. Additionally, FCA breached the express warranty by performing illusory repairs. Rather than repairing the vehicles pursuant to the express warranty, FCA falsely informed Class Members that there was no problem with their vehicle, performed ineffective software flashes, or replaced defective components in the ZF 9HP Automatic Transmissions with equally defective components, without actually repairing the vehicles.

149. Plaintiff and Class Members are entitled to legal and equitable relief against Defendant, including actual damages, consequential damages, specific performance, attorneys' fees, costs of suit, and other relief as appropriate.

RELIEF REQUESTED

150. Plaintiff, on behalf of himself and all others similarly situated, requests the Court to enter judgment against Defendant, as follows:

- a) An order certifying the proposed Class and Sub-Class, designating Plaintiff as named representative of the Class, and designating the undersigned as Class Counsel;
- b) A declaration that Defendant is financially responsible for notifying all Class Members about the defective nature of the ZF 9HP Automatic Transmission;
- c) An order enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles; compelling Defendant to issue a voluntary recall for the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling

Defendant to remove, repair, and/or replace the Class Vehicles' ZF 9HP Automatic Transmissions with suitable alternative product(s) that do not contain the defects alleged herein; enjoining Defendant from selling the Class Vehicles with the misleading information; and/or compelling Defendant to reform its warranty, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed;

- d) An award to Plaintiff and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;
- e) Any and all remedies provided pursuant to the Florida Commercial Code, F.S. §§ 672.313 and/or 672.314;
- f) A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles, or make full restitution to Plaintiff and Class Members;
- g) An award of attorneys' fees and costs, as allowed by law;
- h) An award of pre-judgment and post-judgment interest, as provided by law;
- i) Leave to amend the Complaint to conform to the evidence produced at trial; and
- j) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

151. Plaintiff demands a trial by jury of any and all issues in this action so triable.

Dated: May 3, 2019 Respectfully Submitted,

STEPHEN J. BAGGE, P.A.

/s/ Stephen J. Bagge
Stephen J. Bagge (FBN 97788)
3902 Henderson Blvd.

Suite 208-30
Tampa, Florida 33629
sbagge@baggelaw.com
Tel: 813-250-0511

Russell D. Paul (*pro hac vice
forthcoming*)

Jeffrey L. Osterwise (*pro hac vice
forthcoming*)

BERGER MONTAGUE PC

1818 Market Street
Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
Fax: (215) 875-4604
rpaul@bm.net
josterwise@bm.net

*Attorneys for Plaintiff and the
Proposed Class and Subclass*