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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

BK TRUCKING CO., SANTELLI TRUCKING, INC, HEAVY WEIGHT ENTERPRISES, INC., and RUSTY DANIEL TRUCKING, INC., On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. PACCAR, INC., PACCAR ENGINE COMPANY, KENWORTH TRUCK COMPANY, and PETERBUILT MOTORS COMPANY, Defendants.	**Civil Action No**: **1:15-cv-02282-JBS-AMD**

CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs, BK Trucking Co. ("BK"), Santelli Trucking, Inc. ("Santelli"), Heavy Weight Trucking, Inc. ("Heavy Weight") and Rusty Daniel Trucking, Inc. ("Daniel") (collectively, "Plaintiffs"), bring this action against Defendants, Paccar, Inc., Paccar Engine Company,

Kenworth Truck Company and Peterbilt Motors Company (collectively, "Defendants" or "PACCAR"), by and through their attorneys, individually and on behalf of all others similarly situated, and allege as follows based on: (a) personal knowledge; (b) the investigation of counsel; and (c) information and belief:

INTRODUCTION

1. This is a class action lawsuit brought by Plaintiffs on behalf of themselves and New Jersey, Ohio and Texas classes of current and former owners and lessees of Peterbilt or Kenworth trucks and other heavy duty vehicles containing PACCAR MX-13 diesel engines ("Defective Vehicles" or "Vehicles"). The PACCAR MX-13 engine ("Engine(s)") includes the After-Treatment System with integrated systems and their parts and components ("ATS"). The Engines with the ATS were produced by Defendants, who jointly developed, designed, manufactured, marketed, assembled, warranted and sold the Vehicles, and Engines, to comply with the Environmental Protection Agency's ("EPA") 2010 Heavy Duty On Highway Emissions Standard ("2010 Standard" or "EPA 2010 Emission Standard(s)"), as well as the California Air Resources Board emissions standards, and includes the Model Years ("MY") beginning in 2010.

2. This action arises from Defendants' failure, despite longstanding knowledge, to disclose to Plaintiffs and other customers that the Vehicles are defective and that the ATS and integrated systems, and their parts and components, were and are defective when sold. The ATS suffers from constant failure under all conditions and applications on a consistent basis, even after repeated warranty repairs. These repeated warranty repairs and replacements fail or have failed to repair and/or correct the defects, resulting in damages to Plaintiffs and the putative Class members. Damages include, but are not limited to, diminished value of the Vehicles, out-

of-pocket costs such as repairs and related hotel/taxi charges, towing 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 Defendants' Engines or the certification of those Engines. Plaintiffs do not claim that Defendants violated any provision of the Clean Air Act, or 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. Rather, Plaintiffs allege that the Engines suffer from a common defect that renders them unreliable, resulting in the Engines failing, derating, or requiring repowering. This is a defect Defendants knew or should have known existed before releasing the Engines into the stream of commerce. The defect is one that Defendants cannot fix and has caused Plaintiffs and putative class members to suffer substantial damages.

4. Defendants were aware of the defective nature of the Vehicles prior to bringing them to market. In particular, Defendants have seen sharp increases in warranty repair work immediately after the introduction of the Engines beginning with the 2010 MY. Further, numerous complaints on the internet and elsewhere discuss the problems with the Vehicles, including accounts from Class members who have complained about the consistent ATS failures to Defendants. Notwithstanding this knowledge, Defendants have intentionally concealed, withheld from, and/or misrepresented this material information to Plaintiffs and other purchasers of the Defective Vehicles. Meanwhile, Defendants have made numerous affirmative statements touting the high quality, durability and reliability of the Vehicles, as well as the attempted repairs thereto, which, as set forth below, were false and misleading.

5. Additionally, the defects cause the Vehicles to lose power and stop, forcing the driver of the Vehicle to pull to the side of the road and be towed to a PACCAR-authorized repair shop. This creates a serious safety concern to the drivers of the Vehicles, the occupants of other vehicles, and the public.

6. As a result of Defendants' unfair, deceptive and fraudulent business practices, as set forth herein, the Vehicles have a lower market value and are inherently worth less than they would be in the absence of the defects. Plaintiffs and Class members are forced to absorb losses upon purchase and sale of the Vehicles due to their defective nature.

7. For customers with Vehicles within the standard warranty period of 24 months or 250,000 miles or with an extended warranty, as discussed further below, Defendants have done no more than to temporarily repair the Vehicle or replace a defective component with another equally defective and inherently failure-prone component and/or system, which has not remedied the defect. Further, Defendants have refused to take any action to correct the concealed defects when Vehicles continue to experience the same failures over and over again, outside the warranty period. Since the defect surfaces well within the warranty period for the Vehicles, and continue unabated after the expiration of the warranty, even where Defendants have made repairs or replaced the ATS components several times and falsely told Class members that their Vehicles were repaired – and given Defendants' knowledge of the concealed defect – any attempt by Defendants to limit their warranty with respect to the defect is unconscionable here.

8. As a result of Defendants' unfair, deceptive and/or fraudulent business practices, owners and/or lessees of the Vehicles, including Plaintiffs, have suffered an ascertainable loss of money and/or property and/or loss in value.

9. Plaintiffs bring this action to redress Defendants' violations of the New Jersey Consumer Fraud Act ("CFA"), Texas Deceptive Trade Practices Act ("TDTPA"), and seek recovery for Defendants' breach of express warranty, negligent design in Ohio, and the covenant of good faith and fair dealing.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1332(d)(2) because the matter in controversy exceeds $5,000,000, exclusive of interest and costs, and this is a class action in which Class members and Defendants are citizens of different states.

11. Venue is proper in this judicial District pursuant to 28 U.S.C. §1391 because certain Plaintiffs are located in this District and Defendants also transact business in this District and are subject to personal jurisdiction in this District. Additionally, Defendants have advertised in this District, have authorized repair and other facilities within this District, and have received substantial revenue and profits from the sale and/or leasing of Vehicles in this District; therefore, a substantial part of the events and/or omissions giving rise to the claims occurred within this District.

12. This Court has personal jurisdiction over Defendants. Defendants intentionally and purposefully placed Vehicles with the Engines into the stream of commerce within New Jersey and throughout the United States. As such, Defendants have conducted substantial business in this judicial District.

THE PARTIES

13. BK is a New Jersey corporation with its principal place of business at 1000 Route 40, Newfield, New Jersey, and, therefore, is a citizen and resident of New Jersey.

14. Santelli is a New Jersey corporation with its principal place of business at 1404 East Oak Road, Vineland, New Jersey, and, therefore, is a citizen and resident of New Jersey.

15. Heavy Weight is a Michigan corporation with its principal place of business at 13840 Lakeside Circle Sterling Heights, MI 48313, and, therefore, is a citizen and resident of Michigan, having also purchased most, if not all, of its Vehicles from Cleveland Peterbilt, LLC at 8650 Brooklyn Road, Brooklyn, Ohio 44129.

16. Daniel is a Texas corporation with its principal place of business at 755 Co Road 3341, Sulphur Springs, Texas, and, therefore, is a citizen and resident of Texas.

17. Defendant Paccar, Inc. ("PACCAR") is a Delaware corporation with its principal place of business in Bellevue, Washington, and, therefore, is a citizen of Delaware and Washington. PACCAR is the third-largest manufacturer of medium- and heavy-duty trucks in the world and sells tractor-trailer and vocational trucks in the United States and within New Jersey under the names of its subsidiaries, Kenworth and Peterbilt.

18. Defendant, Paccar Engine Company ("PEC") is a Mississippi corporation with its principal place of business in Bellevue, Washington, and therefore, is a citizen of Washington and Mississippi. PEC is a subsidiary of PACCAR, which manufactures the Engine.

19. Defendant, Kenworth Truck Company ("Kenworth"), is a division/subsidiary of PACCAR, headquartered in Bellevue, Washington, that markets and sells Kenworth brand vehicles, many of which utilize the Engine. Kenworth, therefore, is a citizen of Washington.

20. Defendant, Peterbilt Motors Company ("Peterbilt"), is a division/subsidiary of PACCAR, headquartered in Bellevue, Washington, that markets and sells Peterbilt brand vehicles, many of which utilize the Engine. Peterbilt, therefore, is a citizen of Washington.

FACTUAL ALLEGATIONS

A. The Engine And ATS Emissions System

21. PACCAR is an international manufacturer of heavy-duty commercial vehicles sold through its divisions/subsidiaries, Kenworth and Peterbilt. Prior to 2010, Kenworth and Peterbilt Class 8 (vehicles with a gross vehicle weight rating above 33,000 lbs.) heavy-duty vehicles were powered by diesel engines purchased from third parties, such as Caterpillar, Inc.

22. Beginning in 2010, PACCAR began manufacturing the Engine. The Engine was adapted, in large part, from an existing PACCAR engine that was offered internationally and Defendants represent that the ATS, utilizing the Selective Catalyst Reduction ("SCR") technology, has been successfully used for many years and provides a reliable, economical and effective technology.

23. In order to meet the EPA 2010 Emission Standard applicable to heavy duty, on-highway diesel engines, PACCAR jointly designed, manufactured, sold for profit, and warranted the Engines with an ATS emission control unit.[1]

24. PACCAR's various development, design, engineering, manufacturing, and business units participated in approval of the ATS ultimately used in the Engines. The ATS was designed to perform both passively and actively, and includes two primary elements: 1) a Diesel Particulate Filter ("DPF") System; and 2) an SCR System.

25. The DPF System includes the hydrocarbon doser, Diesel Oxidation Catalyst ("DOC") and the DPF and is intended to participate in the reduction of engine soot and particulate matter.

[1] As set forth above, the defect alleged herein only affects the use, operation and movement of the Vehicles and does not implicate any violation or enforcement of the Clean Air Act or EPA Emissions Standards.

26. The components of the DPF System perform the following functions: 1) the ATS inlet and outlet adapt the Vehicle exhaust piping to the ATS, and also provide a mounting location for the aftertreatment gas temperature sensors; 2) the DPF differential pressure sensor measures the restriction across the DPF; 3) the DPF filters soot out of the exhaust; and 4) when activated, the HC Doser sprays a small amount of diesel fuel (the HC) into the exhaust. The catalyst in the DOC reacts with the HC to generate heat. The heat is used to clean (regenerate) the DPF by reducing the trapped soot to ash. Soot is composed of the partially burned particles of fuel that occur during normal engine operation (black smoke). Over time, both soot and ash accumulate in the DPF and must be removed. Soot is removed by the regeneration process, while ash is removed by removing the DPF and cleaning it at specified intervals.

27. The SCR System is composed of several main components: 1) Diesel Emissions Fluid ("DEF") Controller; 2) DEF Dosing Unit ("DEF Module"); 3) DEF Dosing Valve; and 4) SCR Catalyst. The SCR System is intended to convert harmful NOx emissions to harmless matter. The SCR System works by injecting small amounts of a non toxic, urea-based DEF into the Vehicle's exhaust stream after it exits the DPF. The exhaust then enters the SCR, where a catalyst reacts with the DEF and NOx, producing nitrogen gas and water vapor, which is expelled from the exhaust.

28. The ATS and integrated systems and their parts and components are materially identical in all Engines. A schematic of the ATS, from the PACCAR manual, is attached hereto as Exhibit "A."

29. Plaintiffs assert that the defect, which upon information and belief, was and is known to Defendants, causes a Vehicle to not function as required under all operating conditions, on a consistent and reliable basis, even after repeated warranty repairs and replacements. These

repeated warranty repairs and replacements fail to repair or correct the defect resulting in damages, including, *inter alia,* diminished value of the Vehicles, and the costs to re-power the Vehicles with diesel engines that are consistently reliable and functioning and are compliant with the EPA Emission Standards.

B. Defendants' Representations And The Defective Nature Of The Engines

30. Defendants made the business decision to investigate, design, manufacture, and sell, for profit, heavy-duty diesel engines that complied with all of the requirements of the EPA 2010 Emission Standard. The Engines are manufactured by Defendant PEC.

31. In the 2010 Annual Report, PACCAR reported, *inter alia*, that the Engine achieved certification by the EPA and the California Air Resources Board to their stringent 2010 emission standards. PACCAR also reported that the 400,000-square-foot diesel engine production facility opened in Columbus, Mississippi, during 2010, producing the Engine — for the Kenworth and Peterbilt vehicles. PACCAR further stated that its Engine incorporates precision manufacturing, advanced design and premium materials to deliver best-in-class performance, durability and operating efficiency and that, in addition to the superior performance and fuel efficiency, the PACCAR Engine reinforces PACCAR's legacy of environmental leadership.

32. According to its 2014 Annual Report, PACCAR's Mississippi engine factory produced a record number of Engines in 2014. PACCAR reportedly installed the Engines in over 75,000 Kenworth and Peterbilt trucks since production began in 2010 and, according to Defendants' 2014 Annual Report, customers benefit from the Vehicle's excellent fuel economy, light weight and reliability.

33. With respect to its Kenworth trucks, PACCAR reports that Kenworth installs the Engine in over 35 percent of its vehicles due to the Engine's excellent performance, fuel economy and reliability.

34. Defendants have asserted in their marketing brochures that the Vehicles achieve the "lowest possible fuel consumption, emissions and noise levels." They also assert that the Engine has a B10 design life of 1,000,000 miles (http://www.paccarengines.com/en-us/EngineMX-13.aspx).

35. PACCAR also capitalized on its reputation and promised that the Engines had been properly tested and tried for reliability and durability, in all climates and operating conditions, and that the Engines had undergone over 300,000 hours of lab testing and 50 million miles of real-world work in North America. "PACCAR engines have been tested in all types of applications, climate conditions, and operations" (http://www.paccarengines.com/en-us/TechManufacturing.aspx).

36. However, PACCAR's promises did not materialize. Defendants omitted material information and/or made other materially false and misleading statements concerning the reliability, durability, endurance, and other characteristics of the Engines in the Vehicles, as well as about the warranty coverage and promises to repair the Vehicles. Instead, the Vehicles are defective, causing them to persistently be disabled and inoperable, among other problems.

37. The Vehicle's defect and deficiencies stem from the ATS technology that renders the Vehicles unreliable for transportation and unsuitable for ordinary commercial use. The ATS and its integrated systems and their parts and components include computers and sensors that continuously monitor the operation of the Vehicle, including the ATS. Once a malfunction is detected, a malfunction indicator lamp illuminates to inform the driver of the malfunction and

exhibits a fault code. In addition, the fault code, which identifies the likely malfunction, is stored in the Engine control module ("ECM"). The system stores fault codes and also derates or reduces the Vehicle's engine power, when required to protect the Engine and ATS. These fault codes are used by the Defendants for troubleshooting and repair.

38. PACCAR requires that all engine work be done at its authorized dealers. PACCAR states that "factory trained service technicians at over 670 locations in North America are equipped with the proper tools and expertise to keep PACCAR engines running in your trucks. Skilled technicians will provide all routine engine maintenance and quickly troubleshoot and repair all engine issues. Modern, electronic diagnostic tools help the technician accurately diagnose every engine problem by quickly tapping into the engine ECM and pinpointing the problem. PACCAR has the service network that will keep your engines running every day." (http://www.paccarengines.com/en-us/services.aspx)

39. Plaintiffs and the members of the Class have repeatedly experienced performance and reliability problems. Due to inherent deficiencies in the materials, factory workmanship, design, testing, fabrication and/or manufacture of the ATS, the Vehicles regularly experience numerous fault codes which require servicing. For example, the Engines often manifest problems with their DEF dosers and related systems, sensors, injectors, software, EGR valves and other critical ATS components. These repairs, which are continuously performed, must be done at one of Defendants' authorized service facilities, which necessitates that the Vehicle be off the road for a period of several days or longer, which is costly for Plaintiffs and Class members.

C. Defendants' Knowledge Of The Defective Nature Of The Vehicles

40. Since first bringing the Vehicles to market, the warranty claims for the defects in the parts and components of the ATS have been substantial, making Defendants fully aware of the significant costs to owners and lessees of the Vehicles.

41. This was not a surprise to PACCAR, as it has known and/or should have known since at least 2009, prior to the sales of the Engines, that: (a) the ATS and its integrated systems, as well as their parts and components, were not sufficiently robust to achieve the represented levels of reliability and durability; (b) that the Engines and ATS were experiencing failures; (c) that repeated repairs would be required, but did not provide this material information to purchasers.

42. Defendants boasted that the Engines were tested for over 300,000 hours of lab testing and 50 million miles of real-world work for reliability and durability, in all climates and operating conditions. However, given the widespread problems with the Vehicles very soon after their sale, Defendants knew, or should have known well before the sale of the Vehicles, about the scope of the defects.

43. After the 2010 launch of the Engines, Defendants tracked emission-related warranty claims and ECM data from the on-board diagnostics installed in the Vehicles, and recognized -- or should have recognized -- that attempts to correct the defect failed. Indeed, Defendants received complaints about the Engines shortly after releasing them to the market and issued numerous TSBs relating to, *inter alia*, the ATS, beginning in October 2010.

44. Despite knowing that Plaintiffs and the members of the Class bought Vehicles with Engines that failed to perform wholly, or in substantial part, Defendants responded by authorizing minor adjustments and/or replacement of failed components with the same defective

components, despite their knowledge that such work would not correct the underlying problems, and continued to sell later model years of the Vehicles with the known defects.

45. Defendants have exclusive knowledge or access to material facts about the Vehicles and their Engines that were not and are not known or reasonably discoverable by Plaintiffs and Class members. Plaintiffs and Class members reasonably expect and assume that Defendants will not sell or lease Vehicles with known defects, fail to disclose the defective nature of the Vehicles, or deny the existence of problems.

D. Defendants' Failure To Honor Warranties Covering The Defective Vehicles And Defective ATS

46. Defendants warrant the user of every Engine through, *inter alia,* the base Engine warranty.

47. PACCAR provides a "Base Warranty," a copy of which is attached hereto as Exhibit "B," for 24 months, 250,000 miles or 6,250 hours against defects in material and factory workmanship, which is referred to as a "Warrantable Failure," pursuant to which it will provide parts, components or labor necessary to "repair the damage to the Engine."[2] (http://www.peterbilt.com/resources/PACCAR%20Engine%20Manuals/PACCAR%20Engine%20Manuals_PACCAR_MX-13_Engine_Operator_Manual-English.pdf). The base warranty is part of the price of the Vehicles that Plaintiffs and the Class purchased and there is no additional consideration received for the base warranty, nor could it be refused, as it is part of the purchase of the Vehicle and Plaintiffs and all Class members rely on the existence of a warranty.

[2] The warranty is non-negotiable and states it covers only defects in "material or factory workmanship." PACCAR also sells, for additional consideration, warranty extension contracts which contain the same coverage limitation.

48. The base warranty is part of the operations manual, which is located in each Defective Vehicle. Accordingly, the relevant warranties are provided to the purchasers, including Plaintiffs, without providing them with any opportunity to negotiate their terms.

49. Defendants did not provide disclosure about the problems and defects set forth herein, which were known to Defendants at the time of sale to Plaintiffs. Defendants' warranties are unenforceable and unconscionable for this reason. As a result, Plaintiffs did not receive the Vehicles as expressly warranted by Defendants.

50. Given the Defendants' knowledge of the problems and defects, the warranty disclaimers and durational and damage limitations contained in Defendants' warranty also are unconscionable because Plaintiffs had no meaningful choice in determining those time limitations or disclaimers, there was a gross disparity in bargaining power and knowledge between Defendants and Plaintiffs, and the terms of the warranties unreasonably favored Defendants.

51. In performing warranty repairs, PACCAR has never rejected repairing an emission-related defect because it was not one of "material or workmanship" and the warranty repairs are performed time and time again, without objection and pursuant to the warranty terms.

52. However, the Vehicles repeatedly experience Engine failures that are not corrected by the repeated warranty work performed. These repeated and frequent failures cause the Vehicles to be unreliable, and in spite of numerous attempts, the failures have not and cannot be corrected. The numerous and frequent failures cause warning lights to come on and the Vehicles to derate and shut down, necessitate costly and time-consuming emissions and standard warranty repairs. The derates and shutdowns force the Vehicles to pull off the road and/or immediately proceed to a PACCAR repair facility. These failures render the Vehicles unreliable

and unsafe for transportation because the Vehicles do not and cannot work properly or run reliably or effectively.

53. By failing to correct the defect in the Vehicle, and in spite of repeated, frequent attempts, Defendants have breached the express written base warranty and any extended warranties. By their conduct, Defendants have also violated their statutory obligations.

E. The Warranty Terms Are Unconscionable

54. The warranty was unilaterally drafted by Defendants without any negotiation or opportunity for input from Plaintiffs or any Class member. All terms of the express warranty, including the unilaterally imposed durational and damage limits, were offered by Defendants on a "take it or leave it" basis and without affording any of the Plaintiffs or Class members any meaningful choice in bargaining for the terms of warranty coverage.

55. Defendants, as the manufacturer and retailers of the Vehicles, knew and concealed at the time that they unilaterally imposed the terms of their express warranty (including the warranty's durational and damage limits), that their Engines were defective and would fail repeatedly, initially during and then subsequently beyond the warranty repair period. Defendants also knew and concealed, at the time that they unilaterally imposed the limits on their express warranty, that they were not able to properly perform the warranty service that they had contracted to offer, thereby leaving the Vehicles defective, both within and outside the warranty durational limits unilaterally imposed by Defendants. Defendants also concealed and failed to disclose this knowledge to any Class members and took affirmative steps to conceal this knowledge by continuing to tout the supposed superior attributes and qualities of the Engine and their repairs/alterations thereof.

56. Because (l) there was no opportunity for bargaining the terms of the warranties (including their durational limits); (2) Defendants concealed, during the transactions giving rise to the offering of the express warranties, Defendants' unique and superior knowledge as to the defective nature of the Vehicles, the propensity of the Engines to during and after the durational limits, and Defendants' inability to offer adequate warranty repair service; and (3) Plaintiffs and Class members had no meaningful choice but to accept Defendants' unilaterally imposed warranties terms, the durational and damage limits imposed unilaterally by Defendants as part of their warranties contracts are procedurally and substantively unconscionable and hence unenforceable.

F. The Limited Remedies' Failure Of Their Essential Purpose

57. Given the inherently defective nature of the Vehicles and their propensity to malfunction (or continue to malfunction) and require inordinately expensive repairs shortly after the expiration of the warranty's durational limits unilaterally imposed by Defendants, and given Defendants' non-disclosure and affirmative concealment of these facts, enforcement of the unilaterally imposed durational and damage limits of the express warranty would so oppress and surprise the Plaintiffs and Class members as to render these durational and damage limits unconscionable and hence unenforceable.

58. Under Defendants' warranty, Plaintiffs and members of the Class are entitled to the repair and replacement of defective parts. However, because the defects persist after the repairs and replacements authorized by Defendants are made, and because Defendants knew that these actions were insufficient to cure the numerous issues with the Defective Vehicles, Plaintiffs and members of the Class are left without any remedy under a warranty to correct the Defective Vehicles. Indeed, Plaintiffs have offered Defendants numerous opportunities to correct the

Defective Vehicles, to no avail. Simply put, Defendants' express warranty fails its essential purpose, so that Class members are without the benefit of their primary bargain - a reliable and operational Vehicle free of material defects.

59. Neither the warranty service provided, nor the ATS repairs paid for, after a warranty by Plaintiffs at Defendants facilities fixed the problems with the Vehicles. As a result of Defendants' failure to properly or adequately repair Plaintiffs' Engines during the warranty period or when otherwise obligated by law, Plaintiffs reasonably incurred repair expenses responsive to these issues, and expenses due to the unavailability of the Vehicles, and/or suffered other direct, and reasonably foreseeable, incidental damages.

G. Plaintiffs' And The Class's Experience

60. Upon information and belief, the design, modification, installation and decisions regarding Plaintiffs' and Class members' Vehicles were performed exclusively by Defendants. The ATS is materially identical in all Vehicles, and Defendants created the ATS so that it could not be disabled or bypassed in any way by anyone other than a PACCAR- authorized technician.

61. Defendants developed the owner's manuals, warranty booklets and information included in maintenance and repair recommendations and/or schedules for the Engines and the Vehicles.

62. Not long after Plaintiffs and Class members purchased or leased the Vehicles, and within the period of their warranty, they began to experience numerous failures of the Vehicles to operate effectively and reliably. The defect caused Plaintiffs and Class members to incur significant damages, including the diminution of the value of their Vehicles.

63. Plaintiffs' Vehicles have had continued breakdowns and shut-downs necessitating delivery of the Vehicles to an authorized PACCAR repair facility for emissions warranty work.

Indeed, Defendants did not release explanations of fault codes, so Plaintiffs and Class members cannot identify the reason for the problems and are forced to bring the Vehicles to Defendants for repairs.

64. In spite of repeated warranty work on the Vehicles, Plaintiffs and members of the Class have experienced repeated instances of warning lights illuminating, Engines de-rating and shutting down, sensor, injector and doser problems, as well as a myriad of system failures that prevent or have prevented the Vehicles from properly operating under all conditions.

65. Defendants represented to Plaintiffs and Class members that each warranty repair would correct the Vehicle; but after repair, Plaintiffs and Class members continue to experience failures, when PACCAR knew, or should have known, that the failures would continue and the defects on the Vehicle could not be corrected, leading to further shutdowns and continued repairs.

66. Many authorized service centers are unable to obtain the necessary parts, despite warranty obligations, such that some authorized service centers are unable to service the Vehicles or are subject to extensive wait times, during which the Vehicles are out of service.

67. As a result of the parties' unequal bargaining power, PACCAR's superior knowledge of the Defective Vehicles and ineffectual measures, any warranty limitations, including, but not limited to, the durational limits and the limits as to how Defendants may remedy defects that are contained in the express warranties, are unconscionable and fail in their essential purpose; *i.e.,* to provide non-defective, emission related parts and components so that the Vehicles would operate reliably under all operating conditions and all applications.

68. Knowledge of the 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 Defendants' own affiliates and/or dealers have recognized the diminished value of these Vehicles.

Plaintiffs' Experiences

69. BK has been a loyal PACCAR customer, purchasing Kenworth and Peterbilt trucks for the last 20 years.

70. BK has had a long-term relationship with both Peterbilt- and Kenworth-authorized dealers and received regular visits in New Jersey from PACCAR representatives.

71. BK purchased the Vehicles to replace trucks with Caterpillar engines that constantly failed and were unreliable due to a defective emissions system.

72. However, neither Defendants nor any of their representatives informed BK of Defendants' omissions and/or misrepresentations related to the Vehicles.

73. Between 2010 and 2015, BK purchased ten trucks with the MX13 Engine for between $85,000 and $135,000 per truck. These trucks include: two 2014 Peterbilt (Trucks #111 and #112), a used 2011 Kenworth Model T660 (Truck #113), two 2012 Peterbilt Model 384 (Truck #114 and Truck #115), a 2015 Kenworth Model T680 (Truck #116), a 2015 Kenworth Model T690 (Truck #117), a 2015 Peterbilt Model 579 (Truck #118), two 2015 Kenworth Model T680 (Truck #119 and #120), and two 2015 Peterbilt Model 579 (Truck #121 and #122). The Kenworth trucks were all purchased at Liberty Kenworth of South Jersey in Swedesboro, New Jersey. The Peterbilt trucks were purchased at Hunter Jersey Peterbilt, in Pennsville, New Jersey.

74. BK continues to own all of these Vehicles, except for Trucks #114 and #115.

75. BK experienced numerous substantial and identical breakdowns of the Vehicles, specifically with the ATS and integrated systems and their parts and components. On each

Vehicle, problems began shortly after the Vehicle was purchased, and well within the express warranty provisions. To date, BK experiences the same problems repeatedly. Despite bringing the Vehicles to Defendants' repair facilities within the express warranty provisions, the Vehicles have experienced repeated instances of check engine lights, excessive fault code, Engine de-rating and shutting down, sensor, injector and doser problems, as well as other issues resulting from the defects that prevent the Vehicles from working properly. Defendants' authorized technicians performed the warranty work, but failed to correct the defect despite Defendants' representations that it was fixed or corrected.

76. As a result, BK has suffered substantial out-of-pocket damages in excess of $10,000 for, *inter alia*, post limited warranty serial repairs, rentals and towing, as well as damages of at least several thousand dollars at the time of sale resulting from the difference between what BK (and the market) understood it would be receiving versus what it received as a result of the existence of the defect. BK has also been damaged by virtue of the diminution in the value on the secondary market of the Vehicles due to the defect.

77. Had BK been told of the Vehicle defect it would not have purchased the Vehicles, or would have paid less for the Vehicles.

78. Santelli has been a loyal PACCAR customer, purchasing Peterbilt trucks for the last 20 years.

79. Santelli has had a long-term relationship with Peterbilt-authorized dealers and received regular visits in New Jersey from PACCAR representatives. However, neither Defendants nor any of their representatives informed Santelli of Defendants' omissions and/or misrepresentations related to the Vehicles.

80. Beginning in 2010, Santelli purchased five new Peterbilt Vehicles with the Engines for approximately $135,000 per truck. These trucks include: two 2011 Peterbilt Model 386 (Trucks #606 and #607), two 2012 Peterbilt Model 386 (Truck #620 and #622) and one 2013 Peterbilt 386 (Truck #624). The Peterbilt trucks were purchased at Hunter Jersey Peterbilt in Pennsville, New Jersey.

81. Santelli continues to own all of these Vehicles, except Trucks #606 and #608, both of which were traded to the local Peterbilt dealer.

82. Santelli experienced numerous substantial and identical breakdowns of the Vehicles, specifically with the ATS and integrated systems and their parts and components. On each Vehicle, problems began shortly after the Vehicle was purchased, and well within the express warranty provisions. To date, Santelli experiences the same problems repeatedly. Despite bringing the Vehicles to Defendants' repair facilities within the express warranty provisions, the Vehicles have experienced repeated instances of check engine lights, excessive fault code, Engine de-rating and shutting down, sensor, injector and doser problems, as well as other issues resulting from the defects that prevent the Vehicles from working properly. Defendants' authorized technicians performed the warranty work, but failed to correct the defect despite Defendants' representations that it was fixed or corrected.

83. As a result, Santelli has suffered substantial out-of-pocket damages in excess of $10,000 for, *inter alia*, post-limited warranty serial repairs, rentals and towing, as well as damages of at least several thousand dollars at the time of sale resulting from the difference between what Santelli (and the market) understood it would be receiving versus what it received as a result of the existence of the defect. Santelli has also been damaged by virtue of the diminution in the value on the secondary market of the Vehicles due to the defect.

84. Had Santelli been told of the Vehicle defect it would not have purchased the Vehicles, or would have paid less for the Vehicles.

85. Beginning in 2011, Heavy Weight purchased 14 new Peterbilt Vehicles with the Engines for approximately $135,000 per truck.

86. Heavy Weight experienced numerous substantial and identical breakdowns of the Vehicles, specifically with the ATS and integrated systems and their parts and components. On each Vehicle, problems began shortly after the Vehicle was purchased, and well within the express warranty provisions. To date, Heavy Weight experiences the same problems repeatedly. Despite bringing the Vehicles to Defendants' repair facilities within the express warranty provisions, the Vehicles have experienced repeated instances of check engine lights, excessive fault code, Engine de-rating and shutting down, sensor, injector and doser problems, as well as other issues resulting from the defects that prevent the Vehicles from working properly. Defendants' authorized technicians performed the warranty work, but failed to correct the defect despite Defendants' representations that it was fixed and corrected.

87. As a result, Heavy Weight has suffered substantial out-of-pocket damages in excess of $200,000 for *inter alia*, post limited warranty serial repairs, rentals and towing, as well as damages of at least several thousand dollars at the time of sale resulting from the difference between what Heavy Weight (and the market) understood it would be receiving versus what it received as a result of the existence of the defect. Heavy Weight has also been damaged by virtue of the diminution in the value on the secondary market of the Vehicles due to the defect.

88. Had Heavy Weight been told of the Vehicle defect it would not have purchased the Vehicles, or would have paid less for the Vehicles.

89. Daniel had a relationship with Peterbilt-authorized dealers and received regular visits from PACCAR representatives.

90. However, neither Defendants nor any of their representatives informed Daniel of Defendants' omissions and/or misrepresentations related to the Vehicles.

91. Beginning in 2012, Daniel purchased two new Peterbilt Vehicles with the Engines for between $138,000 and $141,000 per truck. Daniel currently owns one of these Vehicles.

92. Daniel experienced numerous substantial and identical breakdowns of the Vehicles, specifically with the ATS and integrated systems and their parts and components. On each Vehicle, problems began shortly after the Vehicle was purchased, and well within the express warranty provisions. To date, Daniel experiences the same problems repeatedly. Despite bringing the Vehicles to Defendants' repair facilities within the express warranty provisions, the Vehicles have experienced repeated instances of check Engine lights, excessive fault code, Engine de-rating and shutting down, sensor, injector and doser problems, as well as other issues resulting from the defects that prevent the Vehicles from working properly. Defendants' authorized technicians performed the warranty work, but failed to correct the defect despite Defendants' representations that it was fixed or corrected.

93. As a result, Daniel has suffered substantial out-of-pocket damages in excess of $9,000 for, *inter alia*, post limited warranty serial repairs, rentals and towing, as well as damages of at least several thousand dollars at the time of sale resulting from the difference between what Daniel (and the market) understood it would be receiving versus what it received as a result of the existence of the defect. Plaintiff has also been damaged by virtue of the diminution in the value on the secondary market of the Vehicles due to the defect.

94. Had Daniel been told of the Vehicle defect it would not have purchased the Vehicles, or would have paid less for the Vehicles.

95. At all times, Plaintiffs, like all Class members, used their Vehicles in a foreseeable manner and in the manner in which the Vehicles' use was intended.

96. Plaintiffs and Class members have suffered substantial financial losses and other damages as a result of Defendants' actions and the purchase of the Vehicles.

97. Plaintiffs suffered ascertainable loss as a result of Defendants' omissions and/or misrepresentations associated with the Vehicles, including, but not limited to, out-of-pocket loss associated with multiple catastrophic Vehicle failures and attempted repairs to the Vehicle, failure to receive the value bargained for when they purchased the Vehicles, and substantially lower re-sale values associated with the Vehicles.

TOLLING AND ESTOPPEL

98. Plaintiffs' claims did not arise until Plaintiffs discovered, or by the exercise of reasonable diligence should have discovered, that they were injured by Defendants' wrongful conduct as alleged herein. Because Defendants concealed and failed to disclose the defects with their Engines and the Vehicles' ATS exhaust emission control systems, and because Defendants affirmatively warranted and misrepresented that the ATS was free of defects, Plaintiffs did not and could not have discovered the defect through reasonable diligence.

99. The applicable statutes of limitations have been tolled by Defendants' knowing and active concealment of the material facts regarding the defective Engine, and, in particular, its ATS exhaust emission control, as well as by Defendants' affirmative warranties and misrepresentations that the emissions system was free of defects. Defendants 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.

100. Defendants were/are under a continuous duty to disclose to Plaintiffs and the members of the Classes the true character, quality, and nature of the Engine. At all relevant times, and continuing to this day, Defendants knowingly, affirmatively, and actively misrepresented and concealed the true character, quality, and nature of the Engine, including the defective nature of its ATS and the fact that the defect could not be effectively corrected.

101. Plaintiffs and the Classes repeatedly presented their Engines to Defendants' authorized 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 Defendants affirmed:

a. That the emission related parts and component failures were not the result of any application or installation that Defendants deemed improper;

b. That the ATS failures not involve attachments, accessory items or parts not sold or approved by Defendants;

c. That the ATS failures were not the result of any improper engine maintenance, repair, wear and tear, neglect, or abuse;

d. That the ATS failures were not the result of improper fuel, lubricants or liquids;

e. That the ATS defects were not the result of any unreasonable delay in making the Vehicle available after notification of the problem;

f. That the ATS failures were warrantable; and

g. That the ATS defects were corrected following repair and replacement.

102. As such, Defendants are estopped from denying any warranty claims as a result of any limitations in the warranty.

103. Based on the foregoing, Defendants are also estopped from relying on any statutes of limitation in defense of this action and are also estopped from relying on any statutes of limitation in defense of this action because they did not repair these known defects prior to selling or leasing these Vehicles.

104. 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.

105. Defendants knew that they were performing repeated authorized warranty repairs of the ATS inducing the operators of the Engines to believe that the defect was warrantable when they knew, or should have known, that the failures were the direct result of defects in design and/or workmanship, and advising those operators after authorized repairs that the defect causing the failures had been corrected when, in fact, Defendants knew or should have known that the defect was not and could not be corrected.

106. Defendants knew, or should have known:

a. That their Engines would require Defendants' authorized diesel technicians, and licensed software to repair;

b. That commercial Vehicle purchasers and lessees would need to specify the diesel engine for OEM installation and that Defendants' representations of

performance, reliability and durability, especially of the emissions controls, were material to purchasers and lessees of the Engines;

c. That commercial vehicle purchasers and lessees, like Plaintiffs and the Class, would only specify the Engine provided that the Engine was fully warranted for all defects including failures of performance of the ATS;

d. That commercial vehicle purchasers and lessees of Defendants' Engines could not specify alternative emission controls to Defendants;

e. That the commercial vehicle purchasers and lessees would not have the capacity to repair or replace the Engine emissions controls and would rely upon Defendants to determine, through pre-sale testing, which Defendants touted, that the ATS would reliably regenerate under all condition, in all applications, for the expected operational life, and would correct any defects; and

f. That Defendants designed the Engine ATS, drafted the express warranty, accepted repairs to the ATS as warrantable during the warranty period, and knew, or should have known. that the problems would and did continue because of the defective design.

107. 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.

108. Defendants are also estopped from relying upon any and all limitations on time, and mileage, and type of defect or damages contained in any and all of its warranties because: (1) Defendants knew, prior to sale, that their Engines were defectively designed and unlikely to

reliably perform in the real world; and (2) deliberately withheld this information from prospective purchasers.

CLASS ACTION ALLEGATIONS

109. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

110. Plaintiffs bring this action on behalf of the following Classes (collectively, "Class" or "Classes"):

New Jersey Class: All individuals or entities in New Jersey who leased or purchased, not for resale, the Vehicles.

Ohio Class: All individuals or entities in Ohio who leased or purchased, not for resale, the Vehicles.

Texas Class: All individuals or entities in Texas who leased or purchased, not for resale, the Vehicles.

111. Excluded from the Classes are: (a) Defendants, including any entity in which Defendants have a controlling interest, and their representatives, officers, directors, employees, assigns and successors; (b) any person who has suffered personal injury or is alleged to have suffered personal injury as a result of using the Engine; and (c) the Judge to whom this case is assigned.

112. **Numerosity/Impracticability of Joinder:** The members of the Classes are so numerous that joinder of all members would be impracticable. The proposed Classes include, at a minimum, thousands of members. The precise number of Class members can be ascertained

by reviewing documents in Defendants' possession, custody and control or otherwise obtained through reasonable means.

113. **Commonality and Predominance:** There are common questions of law and fact which predominate over any questions affecting only individual members of the Classes. These common legal and factual questions, include, but are not limited, to the following:

a. whether Defendants engaged in a pattern of fraudulent, deceptive and misleading conduct;

b. whether Defendants' acts and omissions violated state consumer fraud acts;

c. whether Defendants made material misrepresentations of fact or omitted stating material facts to Plaintiffs and the Class regarding the Vehicles;

d. whether Defendants' false and misleading statements of fact and concealment of material facts regarding the Vehicles were intended to deceive the public;

e. whether Defendants breached express warranties;

f. whether, as a result of Defendants' misconduct, Plaintiffs and the Class are entitled to equitable relief and other relief, and, if so, the nature of such relief; and

g. whether the members of the Class have sustained ascertainable loss and damages as a result of Defendants' acts and omissions, and the proper measure thereof.

114. **Typicality:** The representative Plaintiffs' claims are typical of the claims of the members of the Classes they seek to represent. Plaintiffs and members of the Class have been injured by the same wrongful practices in which Defendants have engaged. Plaintiffs' claims

arise from the same practices and course of conduct that give rise to the claims of the members of the Classes and are based on the same legal theories.

115. **Adequacy:** Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Classes, and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests which are contrary to or conflicting with the Classes.

116. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are likely in the millions of dollars, the individual damages incurred by each Class member resulting from Defendants' wrongful conduct are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Classes do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Defendants have acted or refused to act on grounds generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief with regard to the members of the Classes as a whole is appropriate.

117. Plaintiffs will not have any difficulty in managing this litigation as a class action.

COUNT I
VIOLATIONS OF NEW JERSEY CONSUMER FRAUD ACT
(N.J.S.A. § 56:8-1, *et seq*.)
(On behalf of the New Jersey Class)

118. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

119. BK and Santelli ("New Jersey Plaintiffs") and Defendants are "persons" within the meaning of the New Jersey CFA.

120. Plaintiffs and the New Jersey Class are "consumers" within the meaning of the CFA.

121. At all relevant times material hereto, Defendants conducted trade and commerce in New Jersey and elsewhere within the meaning of the CFA.

122. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

123. Defendants' practices violated the CFA for*, inter alia*, one or more of the following reasons:

a. Defendants represented that goods or services have sponsorship, approval, characteristics, uses, and benefits that they do not have;

b. Defendants provided, disseminated, marketed, and otherwise distributed uniform false and misleading advertisements, technical data and other information to consumers regarding the performance, reliability, quality and nature of the Engine and its ATS emission control system;

c. Defendants represented that goods or services were of a particular standard, quality, or grade, when they were of another;

d. Defendants engaged in unconscionable commercial practices in failing to reveal material facts and information about the Engine, which did, or tended to, mislead New Jersey Plaintiffs and the New Jersey Class about facts that could not reasonably be known by the consumer;

e. Defendants failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;

f. Defendants caused New Jersey Plaintiffs and the New Jersey Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations, and/or remedies by and through their conduct;

g. Defendants deliberately withheld material facts to New Jersey Plaintiffs and the New Jersey Class, including, *inter alia*, that the Vehicles were defective and were not of merchantable quality, with the intent that New Jersey Plaintiffs and the New Jersey Class members rely upon the omission;

h. Defendants made material representations and statements of fact to New Jersey Plaintiffs and the New Jersey Class members that resulted in New Jersey Plaintiffs and the New Jersey Class reasonably believing the represented or suggested state of affairs to be other than what they actually were;

i. Defendants intended that New Jersey Plaintiffs and the other members of the New Jersey Class rely on their misrepresentations and omissions so that New Jersey Plaintiffs and other New Jersey Class members would purchase Vehicles equipped with the Engines; and

j. Defendants engaged in unconscionable commercial practices in failing to disclose material information discussed above about the Vehicles.

124. Defendants consciously omitted to disclose material facts to Plaintiffs and the New Jersey Class with respect to the Vehicles.

125. Defendants' unconscionable conduct described herein included the omission and concealment of material facts concerning the Vehicles.

126. Defendants intended that New Jersey Plaintiffs and the New Jersey Class rely on its acts of concealment and omissions and misrepresentations, so that Plaintiffs and the Class would purchase and/or lease the Vehicles.

127. Had Defendants disclosed all material information regarding the Defective Vehicles to New Jersey Plaintiffs and the New Jersey Class, they would not have purchased and/or leased the Vehicles, or would have paid less for them.

128. The foregoing acts, omissions and practices proximately caused New Jersey Plaintiffs and the Class to suffer an ascertainable loss in the form of, *inter alia*, additional expenses to continuously remove, repair and replace the Defective Vehicles, diminution of value, loss of use of the Vehicles, as well as towing and other expenses, and they are entitled to recover such damages together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

COUNT II
BREACH OF EXPRESS WARRANTY
(N.J. Stat. Ann. § 12A:2-313)

129. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

130. As an express warrantor, manufacturer and merchant, Defendants each had certain obligations under N.J.S.A. § 12A:2-313 to conform the Vehicles and Engine to the express warranties.

131. When New Jersey Plaintiffs and the members of the Class purchased and/or leased the Vehicles, Defendants expressly warranted, under the base warranty, that they would repair Defects in the Engines, which were supposed to be reliable, durable and economical.

132. The defects at issue in this litigation were present at the time of sale and lease of the Vehicles to Plaintiffs and members of the Class.

133. Defendants breached the express warranties (and continue to breach these express warranties) because they did not (and do not) cover the expenses associated with repairing the Vehicles. Defendants further breached these express warranties because the same Engines and the same defective ATS and integrated systems and their parts and components were placed in Vehicles during purported repairs.

134. Pursuant to the express warranties, Defendants were obligated to pay for or reimburse New Jersey Plaintiffs and the Class members for costs incurred in repairing the defects in the Vehicle.

135. Pursuant to the express warranties, Defendants also were obligated to properly repair the Vehicles, but were not able to cure the defect.

136. Defendants have utterly failed and refused to conform the Vehicles to the express warranties and Defendants' conduct and their knowing concealment of the defects, as discussed throughout this Complaint, renders any attempt on their part to disclaim liability for their actions unenforeceable.

137. New Jersey Plaintiffs used the Engines in a manner consistent with their intended use and have performed each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of Defendants or by operation of law in light of Defendants' unconscionable conduct described throughout this Complaint.

138. Following repeated failed attempts to have the Vehicles repaired, New Jersey Plaintiffs placed Defendants on notice each time they brought in their Vehicles for ineffective repairs.

139. Defendants received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

140. In addition, Defendants have received, on information and belief, thousands of complaints and other notices from customers advising them of the Defective Vehicles at issue in this litigation.

141. In their capacity as a designer, manufacturer, supplier and/or warrantor, and by the conduct described herein, any attempt by Defendants to limit the express warranty in a manner that would exclude or limit coverage for the Vehicles, for defects present as of the time of sale or lease, which Defendants knew about prior to offering the Vehicles for sale or lease, concealed and did not disclose, and did not remedy prior to sale or lease (or afterward), is unconscionable and causes the warranty to fail of its essential purpose, and any such effort to disclaim or otherwise limit liability for the defects at issue is null and void.

142. Accordingly, New Jersey Plaintiffs and the Class members suffered damages caused by Defendants' breach of the express warranty and are entitled to recover damages as set forth herein.

COUNT III
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

143. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

144. New Jersey Plaintiffs and the Class entered into agreements to purchase or lease Vehicles with Defendants, or otherwise were in contractual privity with Defendants as a result of the express warranties described herein.

145. Plaintiffs purchased the Vehicles from Defendants and their authorized dealers and maintained a contractual relationship with Defendants as the result of the warranty accompanying the Vehicles and the fact that Defendants had and have access to repair and Engine data from the Vehicles.

146. The contracts and warranties were subject to the implied covenant that Defendants would conduct business with New Jersey Plaintiffs and the Class in good faith and would deal fairly with them.

147. Defendants breached those implied covenants by selling New Jersey Plaintiffs and the Class the defective Vehicles, when they knew, or should have known, that the contracts and/or warranty were unconscionable and by abusing their discretion in the performance of the contract or by intentionally subjecting Plaintiffs and the Class to a risk [the defective Vehicle] beyond that which they would have contemplated at the time of purchase.

148. Defendants also breached the implied covenants by not placing terms in the contracts and/or warranty that conspicuously stated to Plaintiffs and the Class that the Engines' ATS and integrated systems and their parts and components were defective, as described herein.

149. As a direct and proximate result of Defendants' breach of their implied covenants, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

COUNT IV
BREACH OF EXPRESS WARRANTY, (Ohio Rev. Code § 1302.26)
(On behalf of the Ohio Class)

150. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

151. As an express warrantor, manufacturer and merchant, Defendants each had certain obligations under Ohio Rev.Code § 1302.26 to conform the Vehicles and Engines to the express warranties.

152. When Heavy Weight and the members of the Ohio Class purchased and/or leased the Vehicles, Defendants expressly warranted under the base warranty that they would repair Defects in the Engines, which were supposed to be reliable, durable and economical.

153. The defects at issue in this litigation were present at the time of sale and lease of the Vehicles to Heavy Weight and members of the Ohio Class.

154. Defendants breached the express warranties (and continue to breach these express warranties) because they did not (and do not) cover the expenses associated with repairing the Vehicles. Defendants further breached these express warranty because the same Engines and the same defective ATS and integrated systems and their parts and components were placed in Vehicles during purported repairs.

155. Pursuant to the express warranty, Defendants were obligated to pay for or reimburse Heavy Weight and the Ohio Class members for costs incurred in repairing the defects in the Vehicle.

156. Pursuant to the express warranty, Defendants also were obligated to properly repair the Vehicles, but were not able to cure the defect.

157. Defendants have utterly failed and refused to conform the Vehicles to the express warranty and Defendants' conduct and their knowing concealment of the defects, as discussed

throughout this Complaint, renders any attempt on their part to disclaim liability for their actions unenforceable.

158. Plaintiff Heavy Weight used the Engines in a manner consistent with their intended use and has performed each and every duty required under the terms of the warranty, except as may have been excused or prevented by the conduct of Defendants or by operation of law in light of Defendants' unconscionable conduct described throughout this Complaint.

159. Following repeated failed attempts to have the Vehicles repaired, Heavy Weight placed Defendants on notice each time it brought its Vehicles in for ineffective repairs.

160. Defendants received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

161. In addition, Defendants have received, on information and belief, thousands of complaints and other notices from customers advising them of the defective Vehicles at issue in this litigation.

162. In their capacity as a designer, manufacturer, supplier and/or warrantor, and by the conduct described herein, any attempt by Defendants to limit the express warranties in a manner that would exclude or limit coverage for the defective Vehicles, for defects present as of the time of sale or lease, which Defendants knew about prior to offering the Vehicles for sale or lease, concealed and did not disclose, and did not remedy prior to sale or lease (or afterward), is unconscionable and caused the warranty to fail of its essential purpose, and any such effort to disclaim or otherwise limit liability for the defects at issue is null and void.

163. Accordingly, Heavy Weight and the Ohio Class members suffered damages caused by Defendants' breach of the express warranties and are entitled to recover damages as set forth herein.

COUNT V
Negligent Design/Engineering/Manufacturing
(On Behalf of the Ohio Class)

164. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

165. Defendants owed Heavy Weight and the Ohio Class a non-delegable duty to exercise ordinary and reasonable care to properly design, engineer, and manufacture the Engines against foreseeable malfunctions and to design, engineer and manufacture the Engines and ATS so they would function normally. Defendants also owe a continuing duty to notify Heavy Weight and the Ohio Class of the problem at issue and to repair the defects.

166. Heavy Weight, a small business, did not have equal bargaining power with Defendants.

167. The foreseeable hazards and malfunctions include, but are not limited to, repeated instances of derating and shutdown due to failed regeneration.

168. Heavy Weight and the Ohio Class were not aware of the Engine defect described above and the latent shortcomings, or the likelihood of damage therefrom arising in the normal use of Vehicles equipped with the Engines.

169. There existed at all relevant times alternative exhaust emission control component designs and engineering which were both technically and economically feasible. Further, any alleged benefits associated with Defendants' defective components and designs are vastly outweighed by the real risks which include the added expenses foisted upon Heavy Weight and the Ohio Class by the defect.

170. Defendants did not design, engineer, or manufacture the Engines with reasonable care.

171. The Engines were defective as herein alleged at the time they left Defendants' factories.

172. Defendants breached their duty owed to Heavy Weight and the Ohio Class to design, manufacture, and engineer the Engines to be free of emission related defects.

173. As a direct and proximate result of this breach, Heavy Weight and the Ohio Class have suffered damages.

174. Accordingly, Heavy Weight and the Ohio Class are entitled to recover appropriate damages including, but not limited to, diminution of value.

COUNT VI
VIOLATIONS OF TEXAS DECEPTIVE TRADE PRACTICES ACT, (Tex. Bus. & Com. Code § 17.41 *et seq.*)
(On behalf of the Texas Class)

175. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

176. Daniel and Defendants are "persons" within the meaning of the TDTPA.

177. Daniel and the Texas Class are "consumers" within the meaning of the TDTPA.

178. At all relevant times material hereto, Defendants conducted trade and commerce in Texas and elsewhere within the meaning of the TDTPA.

179. The TDTPA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

180. Defendants' practices violated the TDTPA for, *inter alia*, one or more of the following reasons:

a. Defendants concealed from Daniel and the Texas Class the material facts that the Vehicles were defective and, as such, the Vehicles were not of merchantable quality; and

b. Defendants engaged in unconscionable commercial practices in failing to disclose material information discussed above about the Vehicles.

181. Defendants consciously omitted to disclose material facts to Daniel and the Texas Class with respect to the Defective Vehicles.

182. Defendants' unconscionable conduct described herein included the omission and concealment of material facts concerning the Defective Vehicles.

183. Defendants intended that Daniel and the Texas Class rely on their acts of concealment and omissions and misrepresentations, so that Daniel and the Texas Class would purchase and/or lease the Vehicles.

184. Had Defendants disclosed all material information regarding the Defective Vehicles to Daniel and the Texas Class, they would not have purchased and/or leased the Vehicles, or would have paid less for them.

185. The foregoing acts, omissions and practices proximately caused Daniel and the Texas Class to suffer an ascertainable loss in the form of, *inter alia*, added expense to continuously remove, repair and replace the Defective Vehicles, diminution of value, loss of use of the Vehicles, as well as towing and other expenses, and they are entitled to recover such damages together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

COUNT VII
BREACH OF EXPRESS WARRANTY, (Tex. Bus. & Com. Code § 2.313)
(On behalf of the Texas Class)

186. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

187. As an express warrantor, manufacturer and merchant, Defendants each had certain obligations under Tex. Bus. & Com. Code § 2.313 to conform the Vehicles to the express warranties.

188. When Daniel and the members of the Texas Class purchased and/or leased the Vehicles, Defendants expressly warranted under the base warranty that they would repair Defects in the Engines, which were supposed to be reliable, durable and economical.

189. The defects at issue in this litigation were present at the time of sale and lease of the Vehicles to Daniel and members of the Texas Class.

190. Defendants breached the express warranties (and continue to breach these express warranties) because they did not (and do not) cover the expenses associated with repairing the Defective Vehicles. Defendants further breached these express warranties because the same Engines and the same defective ATS and integrated systems and their parts and components were placed in Vehicles during purported repairs.

191. Pursuant to the express warranties, Defendants were obligated to pay for or reimburse Daniel and the Texas Class members for costs incurred in repairing the defects in the Vehicle.

192. Pursuant to the express warranties, Defendants also were obligated to properly repair the Vehicles, but were unable to cure the defect.

193. Defendants have utterly failed and refused to conform the Vehicles to the express warranties and Defendants' conduct and their knowing concealment of the defects, as discussed throughout this Complaint, renders any attempt on their part to disclaim liability for their actions unenforceable.

194. Daniel used the Engines in a manner consistent with their intended use and have performed each and every duty required under the terms of the warranty, except as may has been excused or prevented by the conduct of Defendants or by operation of law in light of Defendants' unconscionable conduct described throughout this Complaint.

195. Following repeated failed attempts to have the Vehicles repaired, Daniel placed Defendants on notice each time it brought in the Vehicle for ineffective repairs.

196. Defendants received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

197. In addition, Defendants have received, on information and belief, thousands of complaints and other notices from customers advising them of the Defective Vehicles at issue in this litigation.

198. In their capacity as a designer, manufacturer, supplier and/or warrantor, and by the conduct described herein, any attempt by Defendants to limit the express warranty in a manner that would exclude or limit coverage for the Vehicles, for defects present as of the time of sale or lease, which Defendants knew about prior to offering the Vehicles for sale or lease, concealed and did not disclose, and did not remedy prior to sale or lease (or afterward), is unconscionable and causes the warranty to fail of its essential purpose, and any such effort to disclaim or otherwise limit liability for the defects at issue is null and void.

199. Accordingly, Daniel and the Texas Class members suffered damages caused by Defendants' breach of the express warranties and are entitled to recover damages as set forth herein.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, respectfully request judgment against each of the Defendants as follows:

(a) Certifying the Class and appointing Plaintiffs and their counsel to represent the Class;

(b) Ordering PACCAR to provide notice to the Class of the Vehicle defects;

(c) Ordering PACCAR to promptly repair and/or replace all Vehicle 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

Plaintiffs hereby demand a trial by jury as to all issues so triable.

Dated: August 28, 2015

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s/ James C. Shah

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