

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

SOUTHERN CALIFORNIA MOVING, INC.,	§	
	§	
individually and on behalf of all	§	
other similarly situated persons and	§	CIVIL ACTION NO. _____
entities,	§	
	§	
PLAINTIFF	§	CLASS ACTION COMPLAINT
	§	AND JURY DEMAND
v.	§	
	§	
NAVISTAR INTERNATIONAL	§	
CORPORATION and	§	
NAVISTAR, INC.,	§	
	§	
DEFENDANTS	§	

CLASS ACTION COMPLAINT AND JURY DEMAND

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff Southern California Moving, Inc. (“Plaintiff”), on behalf of itself and all other similarly-situated persons and entities, complains of the actions of Defendants Navistar International Corporation and Navistar, Inc. (together, “Navistar”), and respectfully shows the following:

NATURE OF THE ACTION

1. Plaintiff brings this national class action, on behalf of itself and all current and former purchasers and lessees nationwide of 2008-2013 model year Navistar vehicles equipped with Maxxforce Advanced Exhaust Gas Recirculation (“EGR”) diesel engines (the “Maxxforce Engines” or “Engines”) (the “Class” or “Class Members”).

2. Plaintiff complains of Navistar’s (i) failure to disclose, and active concealment of, the defective emissions system (*i.e.*, the “EGR System”) designed and incorporated into the

Maxxforce Engines, which causes widespread Engine damage and repeated Engine failures, and (ii) Navistar's failure to properly repair the defective EGR systems during and/or outside the warranty period. Navistar trucks equipped with the defective EGR Systems in their Engines are not as represented by Navistar, and worth less than the price Plaintiff, Class Members, and Sub-Class Members paid, and what they would have been worth on resale with non-defective engines. In other words, Plaintiff, Class Members, and Sub-Class Members did not receive the benefit of their bargains.

3. Navistar trucks containing the defective EGR Systems in their Engines were (and continue to be) sold under the International brand name, and include (i) International Prostar and Lonestar heavy duty, long haul tractor trailer trucks, (ii) International Transtar heavy duty, regional haul trucks, (iii) International Workstar and Paystar severe duty trucks used for construction applications (*e.g.*, dump trucks), and (iv) International Loadstar severe duty cab forward trucks (*e.g.*, garbage trucks and airplane refueling trucks). The above trucks containing defective EGR Systems in the Engines collectively will be referred to as the "Navistar Trucks" or "Trucks."

4. All of the Navistar Trucks are U.S. Department of Transportation Class 7 and 8 trucks, the largest, heaviest, and most powerful trucks on the road.

5. The defective Maxxforce Engines have failed, or are substantially certain to fail, well before their intended and expected useful life. Plaintiff and numerous Class Member and Sub-Class Member owners and lessees of Navistar Trucks containing the defective EGR System in their Engines have repeatedly repaired and/or replaced the EGR System, other Engine parts, and/or other Engine damage caused by EGR System failure—often at their own expense after Navistar failed to properly repair them during or after the warranty period.

6. Adding insult to injury, because of the widespread impact of the defective EGR System, Navistar repair facilities are backlogged, thereby causing substantial Truck downtime, and causing Plaintiff, Class Members, and Sub-Class Members to suffer lost revenue and incur out-of-pocket expenses they otherwise would not incur, such as paying, housing and feeding idle drivers while they wait for the Trucks to be repaired.

7. The defective EGR System also renders the Maxxforce Engines unreasonably dangerous at the time they were purchased. The defective EGR System can cause, and has caused, sudden breakdowns, forcing Navistar Trucks, often heavily loaded with cargo, to attempt emergency maneuvers. The defective EGR System also causes coolant and exhaust fumes to enter the passenger compartment of the Trucks, elevating the risk of driver poisoning from the fumes.

8. When Navistar Truck owners and lessees, including Plaintiff, have presented the Trucks for repair within the warranty period, Navistar has failed to properly repair the defective EGR System and/or replaced the defective EGR System with another equally defective and failure-prone system.

9. Navistar's above-described wrongful actions, inaction and/or omissions constitute breach of express warranty, breach of the implied warranty of merchantability, breach of the implied covenant of good faith and fair dealing, negligent misrepresentation, fraud and fraudulent concealment, consumer fraud and/or the violation of deceptive trade practices-consumer protection statutes, and/or money had and received/assumpsit.

10. On behalf of itself, Class Members, and Sub-Class Members, Plaintiff seeks to recover from Navistar their (i) actual, consequential, incidental and/or statutory damages, (ii) punitive damages, (iii) pre- and post-judgment interest, (iv) attorneys' fees, litigation expenses,

court costs, and (v) such other relief as the Court may deem just and proper.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. § 1332(d) (CAFA), because (a) there are 100 or more Class Members, (b) at least one Class Member (*e.g.*, Plaintiff) is a citizen of a state diverse from the citizenship of Navistar, and (c) the matter in controversy exceeds \$5,000,000 USD, exclusive of interest and costs; and (iii) 28 U.S.C. § 1367 (supplemental jurisdiction). This Court has *in personam* jurisdiction over Navistar because at all relevant times, Navistar was found, had agents, and/or conducted business in the Southern District of Texas.

12. At all relevant times, Navistar resided, was found, had agents, and/or conducted business in the Southern District of Texas (and continues to do so). A substantial portion of the acts giving rise to the claims alleged herein occurred in the Southern District of Texas. Accordingly, venue is proper in the Southern District of Texas under 28 U.S.C § 1391(b).

PARTIES

13. Plaintiff Southern California Moving, Inc. is an Arizona corporation with operations in Arizona, California, and Texas. Plaintiff owns **five model-year 2012 Navistar Trucks with Maxxforce Engines containing the defective EGR System**. The Trucks are still under warranty. All of Plaintiff's Trucks experienced consistent EGR System failures and numerous Truck breakdowns. Despite taking the Trucks to Navistar authorized repair facilities within the express warranty period for repair, the Engines continued to experience the same defective ERGR System failures. Plaintiff also experienced long wait times for its Engines to be repaired. Only Navistar technicians could work on the defective Engines, and in addition to a shortage of qualified technicians to timely make the repairs, there also was a shortage of EGR System replacement parts.

14. **Neither Navistar, nor any of its dealers or representatives, informed Plaintiff of Navistar's defective EGR Systems and defective Engines. Had Plaintiff been told about the defective EGR System and defective Engines, Plaintiff would not have purchased the Trucks or it would have paid less for them. Plaintiff's experiences mirror the experiences of thousands of other owners and lessees of Trucks with the defective Engines (i.e., the Class Members and Sub-Class Members).**

15. As a direct and/or proximate result of the defective EGR System in the Maxxforce Engines in the Navistar Trucks, Plaintiff has, *inter alia*, (i) suffered lost revenue due to inoperable Trucks languishing in Navistar repair facilities waiting to be repaired, (ii) incurred out-of-pocket expenses it otherwise would not have incurred including, without limitation, expenses incurred in an attempt to repair the defective Trucks, and house and feed stranded drivers, (iii) lost the benefit of its bargains, (iv) suffered substantially lower Truck trade-in and resale values because the problems with the Engines are widely known and feared in the industry, and (v) suffered other injury and financial harm (and will continue to do so into the future).

16. Defendant Navistar International Corporation is a corporation organized under the laws of the State of Delaware, with its principal place of business in Lisle, Illinois. Navistar International Corporation is the parent corporation of Defendant Navistar, Inc. Navistar International Corporation has 16,500 employees; its fiscal year 2013 revenue was \$10.775 billion. Navistar International Corporation's Trucks, products, parts, and services are sold through a network of nearly 1,000 dealer outlets in the United States, Canada, Brazil, and Mexico and more than 60 dealers in 90 countries throughout the world. Navistar International Corporation may be served with Summons and a copy of this Class Action Complaint and Jury

Demand by serving its (i) registered agent for service of process, CT Corporation System, 208 S. LaSalle St., Suite 814, Chicago, IL 60604, or (ii) any Navistar International Corporation officer at 2701 Navistar Drive, Lisle, IL 60532, its principal place of business, via the Texas long-arm statute by service on the Texas Secretary of State.

17. Defendant Navistar, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in Lisle, Illinois. Navistar, Inc. is a wholly-owned subsidiary of Defendant Navistar International Corporation, and manufactures International brand commercial trucks, MaxxForce brand diesel engines, IC Bus school and commercial buses, Workhorse brand chassis for motor homes and step vans. Navistar, Inc. also is a private label designer and manufacturer of diesel engines for the pickup truck, van and SUV markets. Navistar, Inc. may be served with Summons and a copy of this Class Action Complaint and Jury Demand by serving its registered agent for service of process, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201-3136.

BACKGROUND FACTS

18. In 2000, the U.S. Environmental Protection Agency (“EPA”) announced that it would impose new, strict emissions standards on trucks manufactured for the 2010 model year forward (the “2010 EPA Standards”). Every commercial truck manufacturer in the United States except Navistar chose to meet the 2010 EPA Standards by incorporating Selective Catalytic Reduction (“SCR”) exhaust systems into their engines. SCR exhaust systems treat engine exhaust with a urea-based chemical after it leaves the engine.

19. Navistar, however, chose a different technology to meet the 2010 EPA Standards, incorporating Exhaust Gas Recirculation (“EGR”) exhaust systems into its engines, which reduces emissions by subjecting exhaust flowing out of the engine to a second burn in the cylinders. Navistar’s EGR System diverts some of the exhaust into a cooler, which uses ordinary

engine coolant to lower the exhaust temperature. The cooled exhaust is then fed back into the Engine's air intake through the EGR System valves.

20. While many commercial truck and passenger engines use EGR systems of some kind, no manufacturer had ever produced an engine that recirculates such a large percentage of engine exhaust into the cylinders. Because of the additional recirculated exhaust, Navistar's Advanced EGR system generated far more heat within the Engines than in the SCR engines manufactured by Navistar's competitors.

21. Navistar's Advanced EGR systems cannot handle the amount of heat and pressure they generate, leading to broken EGR valves, exhaust leaks that melt and destroy other engine components, and EGR cooler failures—which send uncooled exhaust gas back into the Engine (causing the computer to shut down the engine). The defective EGR System also can cause the EGR cooler to leak coolant through the EGR valves into the Engine. The added stress of non-flammable coolant pushing out the exhaust valves in the cylinder heads destroys the head gaskets, thereby requiring the engine to be rebuilt.

22. Early on, Navistar's competitors, the industry press, and other observers began to suspect that the use of the Advanced EGR system would neither meet the 2010 EPA Standards, nor lead to reliable engines.

23. Navistar responded with numerous, repeated false public statements that its engines would meet the 2010 EPA Standards, the Advanced EGR system was a "proven technology," the engines would be just as reliable and durable as its earlier engines, and Navistar Trucks equipped with the Advanced EGR system would have a "much higher residual value" on the used truck market than trucks equipped with SCR.

24. At the same time Navistar was making these false public statements, Navistar

and its officers were outspoken critics of SCR, calling it a “marooned technology” that would ultimately be abandoned by all manufacturers in favor of Advanced EGR technology.

25. Navistar knew its Advanced EGR system was seriously flawed at least as early as 2004 when Navistar’s 6.0-liter diesel engines were used in various 2004 model year Ford vehicles. Ford faced an unprecedented number of complaints with Navistar’s 6.0-liter diesel engine, leading to Ford suing Navistar for manufacturing and supplying it.

26. The 6.4-liter engine, Navistar’s next diesel engine produced for Ford, also had an EGR system, and also was plagued with problems throughout model years 2008 through 2010—which led Ford to produce its own diesel engines after model year 2010. For model year 2010, Ford utilized an SCR system.

27. Despite experiencing the problems with the EGR system from 2004 through 2010, and despite losing Ford as a customer, Navistar continued producing EGR-based engines and selling them to its customers, including the Maxxforce Engines at issue here.

28. In the October 10, 2013 complaint filed in *Construction Workers Pension Trust Fund – Lake County and Vicinity v. Navistar Int’l Corp.*, Civ. No. 1:13-cv-2111 (Dkt. #66), a case alleging securities violations, several “Confidential Witnesses” are referenced—many of whom discuss problems with Navistar’s EGR technology about which Navistar was aware, including:

- (i) CW2, a former Chief Engineer for the Navistar Engine Group on several Navistar truck and engine launches, who presented problems concerns about the EGR technology to Navistar’s then-President and CEO, Daniel Ustian.
- (ii) CW3, a project development team leader for Navistar in its Fort Wayne, Indiana facility, claims to have been asked to assist in developing a fall-back SCR solution in case the EGR solution was unsuccessful. However, Navistar executives later ended this project.
- (iii) CW5, a former Navistar Chief Engineer, who allegedly told his supervisors that

the EGR technology was not achievable given fuel economy and performance parameters and the stage of EGR development at the time, and that the engineering community believed the physics of EGR was not possible.

- (iv) CW8, a Navistar “Project Manager and Senior Project Manager” from 1997 through 2007, who noted that problems with a diesel particulate filter in the EGR engines would “stop up and shut down the engine as more exhaust flowed through the engine.” This increase in exhaust gas recirculation also lowered fuel economy, decreased durability, and increased cooling demands on the engine.
- (v) CW12, “Navistar’s Senior Vice President, North American Sales Operations,” claims that Mr. Ustian told him directly not to discuss an alternate solution to the EGR technology or he would be fired.
- (vi) CW13, a Navistar employee from July 2008 to April 2013 who held various Vice President and managerial roles, claims that “[b]y mid-2011, the EGR solution engines were experiencing significant warranty issues.” Mr. Ustian and other senior managers had access to these reports detailing the warranty issues.
- (vii) CW16, a Navistar employee from 2007 until 2012, claims it became apparent in 2011 that Navistar was experiencing an increase in the failure of EGR engine components—which was linked to an increase in exhaust gas flowing through the engine, and the resulting soot buildup.
- (viii) CW18, a Navistar employee since July 2001, stated that the warranty problem was initially believed to be related to the EGR valve. However, even after the EGR valve’s fix, warranty issues persisted through 2012, allegedly as a result of EGR cooler failure.

In other words, Navistar knew the Maxxforce Engines were defective before the first truck equipped with a Maxxforce Engine was ever sold. Nonetheless, Navistar failed to disclose the problems with the Maxxforce Engines.

29. Numerous online complaints were lodged by Navistar Truck owners demonstrating the magnitude of the defective EGR System and its potential dangers, including (i) coolant leaking into the exhaust system, (ii) overheating issues, exhaust issues, wiring harness issues, and computer issues resulting in extended stays at repair facilities to identify and fix the problems, and (iii) the corresponding down time.

30. The Maxxforce Engine exhaust pipes between the EGR valve and exhaust

manifold leak, allowing exhaust fumes into the cab—which was the subject of an October 11, 2011 complaint filed with the NHSTA. Navistar Truck owners also regularly complained about exhaust leaks on the Internet.

31. At the same time it paid hundreds of millions of dollars in warranty claims to replace defective parts with equally defective parts on its Maxxforce EGR Engines, Navistar (i) touted its EGR technology as the future of emissions technology, and (ii) intentionally failed to disclose to disclose the defective EGR system were not fixable. Navistar blamed the defective EGR system and warranty claims on manufacturing problems (which it claimed to have resolved), and continued to portray the Engines as reliable.

32. Yet, these were the very problems Navistar had experienced with its EGR-based diesel engines since 2004. Navistar knew the problems would continue as long as Navistar stayed with the EGR system.

33. On information and belief, Navistar failed to disclose to customers that coolant consumption caused by the defective EGR systems was outside the normal range.

34. In July 2012, Navistar finally announced it was abandoning Advanced EGR and adopting for the 2013 model year the same SCR technologies its competitors had used all along.

35. Even after announcing its switch to SCR technology, Navistar continued to sell the Engines and knowingly failed to disclose to buyers that resale market demand for vehicles equipped with the defective Maxxforce Engines would be weak.

36. In August 2012, while discussing Navistar's announcement that beginning in March 2013, Navistar would equip its International Trucks with SCR and abandon Advanced EGR, the Commercial Carrier Journal quoted Jack Allen, Navistar North American Truck Group president, downplaying any problems with the Advanced EGR engine Trucks; to wit, among

other things, (i) “customers should not be hesitant to purchase an EGR-only MaxxFORCE-equipped truck between now and March,” and (ii) “the resale value of EGR-only MaxxFORCE-equipped trucks will prove to be temporary.”

37. The trucking industry is now well aware of the problems with the Engines. Not only were the Trucks equipped with these Engines worth far less at the time of purchase than they would have been with an engine free from defects, the Trucks have a significantly diminished value on the resale market compared with competitors’ trucks with similar mileage and are very difficult to sell. Customers who bought the Trucks with MaxxFORCE Engines are now stuck with an unfixable defective EGR system, dwindling or expired warranties, and a greatly diminished market for resale or trade-in of the used Trucks.

38. The powertrain and emissions systems in the Engines are covered by the Navistar standard 5-year or 100,000 mile warranty, whichever comes first:

All emission control system parts proven defective during normal use will be repaired or replaced during the warranty period. Warranty repairs and service will be done by any authorized International dealer with no charge for parts, labor, and diagnostics.

39. When owners and lessees, including Plaintiff, presented Trucks to Navistar for repair within the warranty period, Navistar failed to properly repair the emissions system and/or replaced it with another equally defective and failure-prone system, to Navistar’s financial benefit and Plaintiff’s, Class Members’, and Sub-Class Members financial detriment. This case has resulted.

CLASS ACTION ALLEGATIONS

40. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this nationwide class action against Navistar, for itself and all members of the following Class of similarly situated Truck owners and lessees:

All persons and entities in the United States that purchased, not for resale, or leased a 2008-2013 model year Navistar vehicles equipped with Maxxforce Advanced EGR diesel engines in the United States.

Excluded from the Class are Navistar, its agents, affiliates, and employees, the Court, and Court personnel.

41. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff also brings this action against Navistar, for itself and all members of the following Sub-Class of similarly situated Truck owners and lessees:

All persons and entities in the United States that purchased, not for resale, or leased a 2008-2013 model year Navistar vehicles equipped with Maxxforce Advanced EGR diesel engines in Texas.

Excluded from the Class are Navistar, its agents, affiliates, and employees, the Court, and Court personnel.

42. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff also brings this action against Navistar, for itself and all members of the following Sub-Class of similarly situated Truck owners and lessees:

All persons and entities in the United States that purchased, not for resale, or leased a 2008-2013 model year Navistar vehicles equipped with Maxxforce Advanced EGR diesel engines in Arizona.

Excluded from the Class are Navistar, its agents, affiliates, and employees, the Court, and Court personnel.

43. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff also brings this action against Navistar, for itself and all members of the following Sub-Class of similarly situated Truck owners and lessees:

All persons and entities in the United States that purchased, not for resale, or leased a 2008-2013 model year Navistar vehicles equipped with Maxxforce Advanced EGR diesel engines in California.

Excluded from the Class are Navistar, its agents, affiliates, and employees, the Court, and

Court personnel.

44. The proposed Nationwide Class and Sub-Classes consist of hundreds, if not thousands, of geographically dispersed members, the joinder of which in one action is impracticable. The precise number and identities of the Class Members and Sub-Class Members are currently unknown to Plaintiff, but are readily ascertainable from the Navistar-maintained lists and records of Trucks with defective Engines sold and/or serviced by Navistar.

45. Navistar violated the rights of each Class Member and each Sub-Class Member in the same way by its above-described uniform unlawful and intentional schemes, wrongful actions, inaction and/or omissions.

46. There are questions of law and fact common to the proposed Class as a whole that predominate over any questions affecting individual Class Members and Sub-Class Members including, *inter alia*:

- (i) whether the Maxxforce Advanced EGR Engines are defectively designed and/or manufactured such that they are not suitable for their intended use;
- (ii) whether the Maxxforce Advanced EGR Engines suddenly and dangerously fail;
- (iii) whether the Maxxforce Advanced EGR Engines are substantially likely to fail before their intended useful life as a result of their defective design and/or manufacture;
- (iv) whether Navistar knew or should have known of the inherent design and/or manufacturing defect of the Maxxforce Advanced EGR Engines;
- (v) whether Navistar fraudulently concealed from and/or failed to disclose to Plaintiff, Class Members and/or Sub-Class Members that Maxxforce Advanced EGR Engines were inherently defective and dangerous and prone to fail prematurely;
- (vi) whether Navistar failed to adequately warn Plaintiff, Class Members and/or Sub-Class Members of the inherent defects and dangers posed by the Maxxforce Advanced EGR Engines;
- (vii) whether Navistar's dealerships were unable to properly repair the defective EGR

Systems, such that Navistar failed to honor its warranty obligation to properly repair the Engines during the warranty period;

- (viii) whether Navistar's above-described wrongful actions, inaction and/or omissions constitute breach of express warranty, breach of the implied warranty of merchantability, breach of the implied covenant of good faith and fair dealing, negligent misrepresentation, fraud and fraudulent concealment, consumer fraud and/or deceptive trade practices-consumer protection statutes, and/or money had and received/assumpsit;
- (ix) whether Navistar's above-described wrongful actions, inaction and/or omissions directly and/or proximately caused Plaintiff, Class Members and/or Sub-Class Members to suffer injury and/or damages;
- (x) whether Plaintiff, Class Members and/or Sub-Class Members are entitled to recover actual damages, consequential damages, incidental damages, statutory damages, punitive damages, pre- and post-judgment interest, attorneys' fees, litigation expenses and/or court costs and, if so, the amount of the recovery; and
- (xi) whether Plaintiffs and Class Members are entitled to injunctive relief and/or other equitable relief.

47. Plaintiff's claims are typical of the unnamed Class Members and Sub-Class Members because they have a common factual source and rest upon the same legal and remedial theories—*e.g.*, Plaintiff, Class Members and/or Sub-Class Members were damaged by the same wrongful actions, inactions and/or omissions engaged in by Navistar; to wit, the manufacture and sale of the inherently defective and dangerous Maxxforce Advanced EGR Engines, intentional concealment of the defects, and Navistar's inability to repair the defects.

48. Plaintiff and its counsel will fairly and adequately represent the interests of Class Members and Sub-Class Members. Plaintiff has no interests antagonistic to, or in conflict with, any of the Class Members' and/or Sub-Class Members' interests. Plaintiff's counsel are highly experienced in leading and prosecuting class actions and complex commercial litigation, including consumer and vehicle defect class actions.

49. A class action is superior to all other available methods for fairly and efficiently

adjudicating Plaintiff's, Class Members' and Sub-Class Members' claims. Plaintiffs, Class Members, and Sub-Class Members have been (and will continue to be) harmed as a direct and/or proximate result of Navistar's above-described wrongful actions, inaction and/or omissions. Litigating this case as a class action is appropriate because (i) it will avoid a multiplicity of suits and the corresponding burden on the courts and Parties, (ii) it would be virtually impossible for all Class Members and Sub-Class Members to intervene as parties-plaintiff in this action, (iii) it will allow numerous entities with claims too small to adjudicate on an individual basis because of prohibitive litigation costs to obtain redress for their injuries, and (iv) it will provide court oversight of the claims process once Navistar's liability is adjudicated.

50. Certification, therefore, is appropriate under FED. R. CIV. P. 23(b)(3) because the above-described common questions of law or fact predominate over any questions affecting individual Class Members and Sub-Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

51. Certification also is appropriate under FED. R. CIV. P. 23(b)(2) because Navistar has acted or refused to act on grounds generally applicable to the Nationwide Class and/or Texas, Arizona, and California Sub-Classes, thereby making appropriate final injunctive relief and/or equitable relief with respect to the Nationwide Class and/or Texas, Arizona, and California Sub-Classes as a whole.

52. Certification also is appropriate under FED. R. CIV. P. 23(b)(1) because the prosecution of separate actions by individual Class Members and Sub-Class Members would create a risk of establishing incompatible standards of conduct for Navistar. For example, one court might decide that the challenged actions are illegal and enjoin Navistar, while another court might decide that the same actions are not illegal. Individual actions also could be dispositive of

the interests of the other Class Members and Sub-Class Members who were not parties to such actions and substantially impair or impede their ability to protect their interests.

53. Navistar's above-described wrongful actions, inaction and/or omissions are applicable to the Nationwide Class and/or Texas, Arizona, and California Sub-Classes as a whole, for which Plaintiff seeks, *inter alia*, damages and equitable remedies.

54. Absent a class action, Navistar will retain the benefits of its wrongdoing despite seriously violating the law and inflicting substantial harm on Plaintiff, Class Members, and Sub-Class Members.

CLAIMS FOR RELIEF/CAUSES OF ACTION

COUNT I

BREACH OF EXPRESS WARRANTY

(For Plaintiff, the Nationwide Class, and the Texas, Arizona, and California Sub-Classes)

55. The preceding factual statements and allegations are incorporated by reference.

56. Navistar warrants the powertrain and emissions systems in the Engines to purchasers and lessees with the following standard 5-year or 100,000 mile warranty, whichever comes first:

All emission control system parts proven defective during normal use will be repaired or replaced during the warranty period. Warranty repairs and service will be done by any authorized International dealer with no charge for parts, labor, and diagnostics.

See, e.g., Engine Operation and Maintenance Manual at 7.

57. As an express warrantor and manufacturer and merchant, Navistar has the obligation to conform the Engines to its express warranty.

58. The defective EGR System in the Engines was present in the Trucks at the time the Trucks were sold and/or leased to Plaintiff, Class Members, and Sub-Class Members.

59. Pursuant to its express warranty, Navistar was (and continues to be) obligated to

pay for or reimburse Plaintiff, Class Members, and Sub-Class Members for costs incurred to repair or replace the defective Engines.

60. Navistar and its authorized dealers, however, breached (and continue to breach) the above-described express warranty by (i) failing and refusing to conform the Engines to the express warranty, (ii) failing and refusing to properly repair the defective Engines in Plaintiff's, Class Members', and Sub-Class Members' Trucks, and/or (iii) allegedly "repairing" the Engines by installing a newer version of the same defective EGR System. Navistar's above-described wrongful actions, inaction and/or omissions voided the limitations on liability contained in its warranty.

61. Plaintiff, Class Members, and Sub-Class Members have used the Engines in a manner consistent with their intended use and performed each and every duty required under the terms of the warranty, except as may have been excused or prevented by Navistar's above-described wrongful actions, inaction and/or omissions or by operation of law in light of Navistar's unconscionable conduct.

62. Navistar had actual knowledge of, and/or received timely notice regarding, the defective EGR Systems in the Engines in the Trucks purchased and/or leased by Plaintiff, Class Members, and Sub-Class Members, and, notwithstanding such knowledge and notice, failed and refused to offer an effective remedy.

63. In its capacity as a supplier and/or warrantor, and by its above-described wrongful actions, inaction and/or omissions, any attempt by Navistar to limit its express warranty in a manner that would exclude or limit coverage for the defective EGR Systems in the Engines in the Trucks purchased and/or leased by Plaintiff, Class Members, and Sub-Class Members, which Navistar knew about prior to offering the Trucks for sale or lease, which

Navistar affirmatively concealed and did not remedy prior to sale or lease (or afterward), is unconscionable. Accordingly, any effort by Navistar to disclaim or otherwise limit its liability for the defective EGR Systems in the Engines in the Trucks purchased and/or leased by Plaintiff, Class Members, and Sub-Class Members is null and void.

64. Navistar's above-described wrongful actions, inaction and/or omissions, which directly and/or proximately caused Plaintiff, Class Members, and Sub-Class Members to suffer economic damages and other actual injury and harm, constitute breach of express warranty at statutory or common law.

COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY **(For Plaintiff, the Nationwide Class, and the Texas, Arizona, and California Sub-Classes)**

65. The preceding factual statements and allegations are incorporated by reference.

66. At all relevant times, Navistar was (and continues to be) a merchant that sold and/or leased Trucks with defective EGR Systems in the Engines. Under the applicable law, the Engines were (and are) required to (i) be fit for the ordinary purposes for which engines are used, and (ii) pass without objection in trade for their description.

67. Navistar has not validly disclaimed, excluded, or modified the above-described warranty or duties—which are express and/or implied—and any attempted disclaimer or exclusion of such implied warranty was (and is) ineffectual.

68. The EGR Systems in the Engines in the Trucks purchased and/or leased by Plaintiff, Class Members, and Sub-Class Members Engines were defective at the time they left Navistar's possession. Moreover, Navistar knew about the defective Engines at the time the purchase and/or sale transactions occurred. Thus, the Engines, when sold and/or leased, and at all subsequent times, were not in merchantable condition or quality, and not fit for their ordinary

intended purpose.

69. Plaintiff, Class Members, and Sub-Class Members have used the Engines in a manner consistent with their intended use and performed each and every duty required under the terms of the implied warranty, except as may have been excused or prevented by Navistar's above-described wrongful actions, inaction and/or omissions or by operation of law in light of Navistar's unconscionable conduct.

70. Plaintiff, Class Members, and Sub-Class Members have had sufficient direct dealings with Navistar and/or its authorized dealers to establish any required privity of contract. Even then, privity is not required to assert this claim because Plaintiff, Class Members, and Sub-Class Members are intended third-party beneficiaries of contracts between Navistar and its dealers; specifically, they are intended beneficiaries of Navistar's express warranty. The dealers were not intended to be the ultimate consumers of the Engines, and have no rights under the Navistar Engine warranties. The warranties were designed for, and intended to benefit, only the ultimate purchasers and lessees of the Trucks; to wit, Plaintiff, Class Members, and Sub-Class Members.

71. Navistar's above-described wrongful actions, inaction and/or omissions, which directly and/or proximately caused Plaintiff, Class Members, and Sub-Class Members to suffer economic damages and other actual injury and harm, constitute breach of the implied warranty of merchantability at statutory or common law.

COUNT III

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING **(For Plaintiff, the Nationwide Class, and the Texas, Arizona, and California Sub-Classes)**

72. The preceding factual statements and allegations are incorporated by reference.

73. Plaintiff, Class Members, and Sub-Class Members entered into contracts with

Navistar to purchase Trucks with Engines, or otherwise were in contractual privity with Navistar and/or were in special relationships with Navistar in which Navistar was in a superior bargaining position because of its knowledge about the EGR Systems in the Engines in the Trucks as a result of the above-described express and/or implied warranties.

74. The above-described contracts and warranties were subject to the implied covenant that Navistar would conduct business with Plaintiff, Class Members, and Sub-Class Members in good faith and would deal fairly with them.

75. Navistar's above-described wrongful actions, inaction and/or omissions, which directly and/or proximately caused Plaintiff, Class Members, and Sub-Class Members to suffer economic damages and other actual injury and harm, constitute breach of the implied covenant of good faith and fair dealing at statutory or common law.

COUNT IV

NEGLIGENT MISREPRESENTATION

(For Plaintiff, the Nationwide Class, and the Texas, Arizona, and California Sub-Classes)

76. The preceding factual statements and allegations are incorporated by reference.

77. Navistar manufactured, distributed, sold and/or leased Trucks to Plaintiff, Class Members, and Sub-Class Members that it knew contained an inherently dangerous or defective condition (*e.g.*, the defective EGR Systems in the Engines).

78. Navistar, in fact, manufactured, distributed, sold and/or leased Trucks to Plaintiff, Class Members, and Sub-Class Members with the defective EGR Systems in the Engines after receiving substantial complaints about the systematic failure of the defective Engines.

79. Navistar, however, did not disclose to Plaintiff, Class Members, and Sub-Class Members any information about the dangerous and defective EGR Systems in the Engines in the Trucks Navistar sold or leased to them, nor was the dangerous defect easily discoverable by

Plaintiff, Class Members, and Sub-Class Members prior to or at the time the Trucks were leased and/or purchased.

80. Navistar omitted this information to induce Plaintiff, Class Members, and Sub-Class Members to purchase and/or lease Trucks with the defective EGR Systems in the Engines.

81. Plaintiff, Class Members, and Sub-Class Members justifiably relied on Navistar's omission in that they paid more for the Trucks with the defective EGR Systems in the Engines than the Trucks would have been worth had Navistar disclosed their defective and dangerous condition, or they would have purchased different trucks altogether.

82. Navistar's above-described wrongful actions, inaction and/or omissions, which directly and/or proximately caused Plaintiff, Class Members, and Sub-Class Members to suffer economic damages and other actual injury and harm, constitute negligent misrepresentation at statutory or common law.

COUNT V

FRAUDULENT CONCEALMENT

(For Plaintiff, the Nationwide Class, and the Texas, Arizona, and California Sub-Classes)

83. The preceding factual statements and allegations are incorporated by reference

84. Navistar omitted an existing fact about the Engines when it failed to disclose information regarding their dangerous and defective condition.

85. Navistar's omission was (and continues to be) material because the defective condition poses a serious safety issue to Truck owners and lessees, and to the general public.

86. The omission rendered Navistar's representations regarding the Engines false because the Engines, in fact, are defective and dangerous.

87. Navistar manufactured, distributed, sold and/or leased Trucks with the defective EGR Systems in the Engines despite knowing about their defective and dangerous condition.

88. Navistar intended that purchasers and lessees would rely on its omissions regarding the safety, reliability, and resale value of the Trucks with the defective Engines in order to bolster sales.

89. Plaintiff, Class Members, and Sub-Class Members were not aware of the defective condition and dangerous condition of the Engines, and could not reasonably have discovered the defective condition.

90. Plaintiff, Class Members, and Sub-Class Members justifiably relied on Navistar's omission in that they paid more for the Trucks with the defective EGR Systems in the Engines than the Trucks would have been worth had Navistar disclosed their defective and dangerous condition, or they would have purchased different trucks altogether.

91. Plaintiff, Class Members, and Sub-Class Members had the right to rely on Navistar's omissions that created the false impression the Trucks were safe and reliable based on reasonable consumer expectations that the Engines would not be designed to fail under normal conditions of use, or would be substantially certain to fail before the end of their useful life.

92. Navistar had an affirmative duty to disclose the defective and dangerous condition of the Engines to consumers because they were in a superior position to know the true state of the defect. Navistar had a duty to speak, but reached its duty by failing to disclose the defective and dangerous condition of the Engines.

93. Navistar's above-described wrongful actions, inaction and/or omissions, which directly and/or proximately caused Plaintiff, Class Members, and Sub-Class Members to suffer economic damages and other actual injury and harm, constitute fraud and fraudulent concealment at statutory or common law.

COUNT VI

**VIOLATIONS OF STATE CONSUMER FRAUD AND DECEPTIVE TRADE
PRACTICES-CONSUMER PROTECTION ACTS**

(For Plaintiff, the Nationwide Class, and the Texas, Arizona, and California Sub-Classes)

94. The preceding factual statements and allegations are incorporated by reference.

95. Plaintiff, Class Members, and Sub-Class Members are “consumers” under the Texas, Arizona, and California consumer fraud and/or deceptive trade practices-consumer protection statutes by purchasing and/or leasing Trucks with the defective EGR Systems in the Engines. Navistar is a “person” that may be sued under such consumer fraud and/or deceptive trade practices-consumer protection statutes for manufacturing, marketing, selling and/or leasing such Trucks.

96. By its above-described unconscionable actions and/or unconscionable course of action, inaction and/or omissions, Navistar knowingly and intentionally engaged in an unconscionable course of action, in violation of such consumer fraud and/or deceptive trade practices-consumer protection acts and statutes, by failing to manufacture, sale, and/or lease properly performing and safe Engines—while, at the same time, knowingly, intentionally, and falsely representing the performance and safety of the Trucks.

97. Navistar’s above-described knowing and intentional wrongful actions, inaction and/or omissions unfairly took advantage of the lack of knowledge, ability, and experience of Plaintiff, Class Members, and Sub-Class Members to a grossly unfair degree regarding the purchase and/or lease of Trucks with the defective EGR Systems in the Engines; to wit, at the time Plaintiff, Class Members, and Sub-Class Members purchased and/or leased the Trucks, they did not know, and had no way of knowing, nor did Navistar disclose, that the Engines were defective and unsafe. In fact, the opposite occurred.

98. Navistar's above-described knowing and intentional wrongful actions, inaction and/or omissions directly and/or proximately caused Plaintiff, Class Members, and Sub-Class Members to suffer economic damages and other actual injury and harm, and collectively constitute violations of such consumer fraud and/or deceptive trade practices-consumer protection statutes. Had Navistar not engaged in such knowing and intentional wrongful actions, inaction and/or omissions, Plaintiff, Class Members, and Sub-Class Members would not have suffered (and continue to suffer) economic damages and other actual injury and harm—for which they are entitled to recover monetary compensation, injunctive relief, and their attorneys' fees, litigation expenses and court costs.

COUNT VII

MONEY HAD AND RECEIVED/ASSUMPSIT

(For Plaintiff, the Nationwide Class, and the Texas, Arizona, and California Sub-Classes)

99. The preceding factual statements and allegations are incorporated by reference.

100. By its above-described wrongful actions, inaction and/or omissions, Navistar holds money conferred on it by Plaintiff, Class Members, and Sub-Class Members for the purchase and/or lease of Trucks with the defective EGR Systems in the Engines. That said, Navistar has been unjustly enriched by the funds it received from Plaintiff, Class Members, and Sub-Class Members that it should have spent to manufacture properly performing and safe Engines and/or repair the Engines so they would properly perform and be safe that, in equity and good conscience, belongs to Plaintiff, Class Members, and Sub-Class Members, and should be refunded, because Navistar failed to do so.

101. Navistar also continues to be unjustly enriched by, *inter alia*, (i) the saved cost of manufacturing properly performing and safe Engines, (ii) the shifted risk and expense of the defective and dangerous Engines to Plaintiff, Class Members, and Sub-Class Members, and (iii)

the return on investment on all above-described amounts.

102. It would be inequitable, unconscionable, and unjust to permit Navistar to retain the benefit of these profits that it unfairly obtained from Plaintiff, Class Members, and Sub-Class Members.

103. Navistar, therefore, should be compelled to refund (or disgorge) such wrongfully collected, saved back and/or shifted funds and expenses to Plaintiff, Class Members, and Sub-Class Members under the common law equitable doctrine of money had and received and/or the duty to make restitution under the common law equitable doctrine of assumpsit.

TOLLING OF THE STATUTES OF LIMITATION

104. The preceding factual statements and allegations are incorporated by reference.

105. **FRAUDULENT CONCEALMENT.** Navistar took active steps to conceal the fact that it wrongfully, improperly, illegally, and repeatedly manufactured, marketed, distributed, sold, and/or leased the Trucks with the defective EGR Systems in the Engines. The details of Navistar's efforts to conceal its above-described unlawful conduct are in its possession, custody, and control, to the exclusion of Plaintiff, Class Members, and Sub-Class Members, and await further discovery. When Plaintiff learned about this material information, Plaintiff exercised due diligence by thoroughly investigating the situation, retaining counsel, and pursuing its claims. Navistar fraudulently concealed its above-described wrongful acts. Should such be necessary, therefore, all applicable statutes of limitation (if any) are tolled.

106. **EQUITABLE ESTOPPEL.** Navistar took active steps to conceal the fact that it wrongfully, improperly, illegally, and repeatedly manufactured, marketed, distributed, sold, and/or leased the Trucks with the defective EGR Systems in the Engines. The details of Navistar's efforts to conceal its above-described unlawful conduct are in its possession, custody,

and control, to the exclusion of Plaintiff, Class Members, and Sub-Class Members, and await further discovery. When Plaintiff learned about this material information, Plaintiff exercised due diligence by thoroughly investigating the situation, retaining counsel, and pursuing its claims. Navistar fraudulently concealed its above-described wrongful acts. Should such be necessary, therefore, all applicable statutes of limitation (if any) also are tolled under the doctrine of equitable estoppel.

107. **EQUITABLE TOLLING.** Navistar took active steps to conceal the fact that it wrongfully, improperly, illegally, and repeatedly manufactured, marketed, distributed, sold, and/or leased the Trucks with the defective EGR Systems in the Engines. The details of Navistar's efforts to conceal its above-described unlawful conduct are in its possession, custody, and control, to the exclusion of Plaintiff, Class Members, and Sub-Class Members, and await further discovery. When Plaintiff learned about this material information, Plaintiff exercised due diligence by thoroughly investigating the situation, retaining counsel, and pursuing its claims. Navistar fraudulently concealed its above-described wrongful acts. Should such be necessary, therefore, all applicable statutes of limitation (if any) also are tolled under the doctrine of equitable tolling.

RELIEF REQUESTED

108. The preceding factual statements and allegations are incorporated by reference.

109. **ACTUAL, CONSEQUENTIAL, AND/OR INCIDENTAL DAMAGES.** As a direct and/or proximate result of Navistar's above-described wrongful actions, inaction and/or omissions, Plaintiff, Class Members, and Sub-Class Members have sustained (and will continue to sustain) actual, consequential, and/or incidental damages in the form of, *inter alia*, (i) lost revenue due to inoperable Trucks languishing in Navistar repair facilities waiting to be repaired, (ii) out-of-

pocket expenses it otherwise would not have incurred including, without limitation, expenses incurred in an attempt to repair the defective Trucks, and pay, house, and feed stranded drivers, (iii) lost benefit of their bargains, (iv) substantially lower Truck trade-in and resale values, and (v) other actual injury and harm—for which Plaintiffs, Class Members and Sub-Class Members are entitled to compensation. Alternatively, Plaintiff, Class Members, and Sub-Class Members are entitled to restitution and/or disgorgement of Navistar's gross revenue from the sales and service of the Trucks with defective EGR Systems and all other amounts by which Navistar has been unjustly enriched. All of the damages sustained by Plaintiff, Class Members, and Sub-Class Members were reasonably foreseeable by Navistar. All conditions precedent to Plaintiff's, Class Members', and Sub-Class Members' claims for relief have been performed and/or occurred.

110. **PUNITIVE DAMAGES.** Navistar's above-described wrongful actions, inaction and/or omissions were committed intentionally, willfully, wantonly and/or with reckless disregard for Plaintiff's, Class Members', and Sub-Class Members' rights and interests. Accordingly, Plaintiff, Class Members, and Sub-Class Members are entitled to recover punitive damages from Navistar as punishment and to discourage such wrongful conduct in the future. All conditions precedent to Plaintiff's, Class Members', and Sub-Class Members' claims for relief have been performed or occurred.

111. **TREBLE AND/OR STATUTORY DAMAGES.** Plaintiff, Class Members, and Sub-Class Members also are entitled to treble and/or statutory damages for Navistar's knowing, willful, intentional, wrongful and unconscionable conduct, in violation of the above consumer fraud and/or deceptive trade practices-consumer protection statutes. All conditions precedent to Plaintiff's, Class Members', and Sub-Class Members' claims for relief have been performed and/or occurred.

112. **INJUNCTIVE RELIEF.** Navistar's above-described wrongful actions, inaction and/or omissions have caused (and will continue to cause) Plaintiff, Class Members, and Sub-Class Members to suffer irreparable harm in the form of, *inter alia*, (i) lost revenue due to inoperable Trucks languishing in Navistar repair facilities waiting to be repaired, (ii) out-of-pocket expenses it otherwise would not have incurred including, without limitation, expenses incurred in an attempt to repair the defective Trucks, and pay, house, and feed stranded drivers, (iii) lost benefit of their bargains, (iv) substantially lower Truck trade-in and resale values, and (v) other injury and financial harm. Such irreparable harm will not cease unless and until enjoined by this Court. Plaintiff, Class Members, and Sub-Class Members, therefore, are entitled to a temporary injunction, permanent injunction and/or other appropriate affirmative relief including, *inter alia*, (i) restitution and/or disgorgement of Navistar's gross revenue from the sales and service of the Trucks with defective EGR Systems and all other amounts by which Navistar has been unjustly enriched, and (ii) an order compelling Navistar to discontinue its above-described wrongful actions, inaction and/or omissions. All conditions precedent to Plaintiff's, Class Members', and Sub-Class Members' claims for relief have been performed and/or occurred.

113. **ATTORNEYS' FEES, LITIGATION EXPENSES AND COURT COSTS.** Plaintiff, Class Members, and Sub-Class Members also are entitled to recover their attorneys' fees, litigation expenses, and court costs under, *inter alia*, the above consumer fraud and/or deceptive trade practices-consumer protection statutes and other relevant state statutes. All conditions precedent to Plaintiff's, Class Members', and Sub-Class Members' claims for attorneys' fees, litigation expenses and court costs have been performed and/or occurred.

WHEREFORE, Plaintiff, for itself and Class Members and Sub-Class Members, respectfully request that (i) Navistar be cited to appear and answer this lawsuit, (ii) this action be certified as a class action, (iii) Plaintiff be designated the Class Representative and representative of the Sub-Classes, and (iv) Plaintiff's counsel be appointed as Class Counsel. Plaintiff, for itself and Class Members and Sub-Class Members, further request that upon final trial or hearing, judgment be awarded against Navistar, in favor of Plaintiff, Class Members, and Sub-Class Members, for:

- (i) actual, consequential, and/or incidental damages to be determined by the trier of fact;
- (ii) punitive damages;
- (iii) treble and/or statutory damages;
- (iv) all amounts by which Navistar has been unjustly enriched;
- (v) an equitable accounting for all benefits, consideration, and gross revenue received, directly or indirectly, by Navistar from the sales and service of the Trucks with defective EGR Systems, including the imposition of a constructive trust, the disgorgement of all ill-gotten gross revenue, and/or all amounts by which Navistar has been unjustly enriched;
- (vi) injunctive relief (as set forth above);
- (vii) pre- and post-judgment interest at the highest legal rates;
- (viii) attorneys' fees, litigation expenses, and costs of suit incurred through the trial and any appeals of this case; and
- (ix) such other and further relief the Court deems just and proper.

JURY DEMAND

Plaintiff, for itself and all others similarly situated, respectfully demands a trial by jury on all claims so triable.

Date: January 9, 2015

Respectfully submitted,

By: /s/ Richard L. Coffman
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**ATTORNEYS FOR PLAINTIFF AND
THE PUTATIVE NATIONWIDE CLASS AND
STATE SUB-CLASSES**