

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LARRY SHARP, et al.,  
Individually and on behalf  
of themselves and all others  
similarly situated,

Plaintiffs,

v.

Civil Case No. 21-12497  
Honorable Linda V. Parker

FCA US LLC, f/k/a Chrysler  
Group, STELLANTIS N.V., and  
CUMMINS, INC.,

Defendants.

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**OPINION AND ORDER GRANTING DEFENDANTS' MOTIONS TO  
DISMISS**

On October 22, 2021, Plaintiffs filed this putative nationwide class action alleging defects in the 6.7-liter turbodiesel engine installed in their heavy-duty trucks. Defendant FCA US LLC (“FCA”) manufactured the trucks while Defendant Cummins, Inc. manufactured the engine.<sup>1</sup> In an almost 300-page, 776-paragraph Second Amended Complaint (“SAC”), filed February 1, 2022, Plaintiffs assert claims under the Magnuson-Moss Warranty Act (“MMWA”) and for

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<sup>1</sup> Defendant Stellantis is FCA’s parent corporation. (SAC ¶ 54, ECF No. 25 at Pg ID 1225.) It does not appear that Plaintiffs have served Stellantis with a summons or copy of the pleadings in this action.

common law breach of contract, as well as claims under the laws of 18 different States for unjust enrichment, breach of implied warranty of merchantability, and/or violation of consumer-protection statutes. (ECF No. 25.)

The matter is presently before the Court on motions to dismiss filed by FCA and Cummins. (ECF Nos. 27, 31.) The motions have been fully briefed, with Plaintiffs filing a single response brief to both motions (ECF No. 36) and FCA and Cummins filing reply briefs (ECF Nos. 37, 38). As well, Plaintiffs filed a sur-reply brief (ECF No. 39-1), to which Defendants responded (ECF Nos. 40-1, 41-1). Lastly, Plaintiffs filed supplemental authority (ECF Nos. 42-1, 43), to which Defendants also responded (ECF Nos. 44, 45). The Court is prepared to rule on the motions.

Cummins also filed a request for the Court to take judicial notice of certain documents. (ECF No. 30.) Specifically, these documents are (i) from the official website of the National Highway Traffic Safety Administration (“NHTSA”), part of the United States Department of Transportation, and (ii) FCA’s limited warranties, which are referred to in Plaintiffs’ pleadings and are central to their claims. (ECF No. 30.) Plaintiffs do not oppose Cummins’ request (*see id.* at Pg ID 2061-62), nor could they present a strong argument for doing so.

Courts frequently take judicial notice of federal regulatory agency materials and materials available through federal agency websites pursuant to Federal Rule

of Evidence 201(b)(2). *See, e.g., Int’l Bhd. of Teamsters v. Zantop Air Transp. Corp.*, 394 F.2d 36, 40 (6th Cir. 1968) (collecting cases); *Gregorio v. Ford Motor Co.*, 522 F. Supp. 3d 264, 279 n.5 (E.D. Mich. 2021) (citing *Purry v. State Farm Fire & Cas. Co.*, 350 F. Supp. 3d 631, 634 (E.D. Mich. 2018)); *Winzler v. Toyota Motor Sales USA, Inc.*, 681 F.3d 1208, 1212-13 (10th Cir. 2012) (“The contents of an administrative agency’s publicly available files . . . traditionally qualify for judicial notice, even when the truthfulness of the documents on file is another matter.”). Further, when deciding a motion to dismiss, a court may consider materials outside the pleadings that “are referred to in the complaint and are central to the claims contained therein.” *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 430 (6th Cir. 2008).

### **General Factual and Procedural Background**

Plaintiffs currently are 15 consumers,<sup>2</sup> claiming residence in 18 States,<sup>3</sup> who seek to represent a nationwide class and subclasses of individuals from each of the 18 States, who purchased or leased the subject vehicles. (SAC ¶ 13, ECF No. 25 at Pg ID 1197-98.) All Plaintiffs, except Larry Sharp, purchased or leased a MY

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<sup>2</sup> A sixteenth individual, William Wayne, voluntarily dismissed his claims against Defendants on April 21, 2022. (ECF Nos. 34, 35.)

<sup>3</sup> The States are Texas, Illinois, California, Oregon, Missouri, Kansas, New York, Idaho, Kentucky, Nevada, Utah, Washington, Arizona, Connecticut, Florida, Maine, North Carolina, and Georgia. (*See* ECF No. 27-1.)

2019 or MY 2020 Ram 2500 or 3500 truck. Sharp purchased a MY 2018 3500 Ram truck. (*Id.*)

Plaintiffs allege that the Cummins engine contains a demonstrably defective high-pressure fuel injection pump manufactured by Bosch (the “CP4 pump”), in that, when used with American diesel fuel (which contains insufficient lubrication compared to diesel made to European specifications), there is friction between metal parts which causes metal shavings to contaminate the fuel system. (*See, e.g., id.* ¶¶ 1, 3, 10, Pg ID 1189, 1191, 1195-96.) This can lead to fuel starvation, resulting in an unexpected loss of vehicle power without warning and potentially a vehicular accident. (*Id.*)

On October 13, 2021—nine days before this lawsuit was filed—FCA opened an investigation as a result of warranty claims associated with the CP4 pump alleging loss of motive power on 2019-2020 MY Ram 2500, 3500, 4500, and 5500 vehicles. (NHTSA Safety Recall Report at 4, ECF No. 30-1 at Pg ID 2068.) After receiving 22 complaints and two field reports alleging stall/loss of power incidents in certain model year 2019-2020 Ram heavy duty trucks equipped with the CP4 pump, NHTSA opened its own investigation the following day. (SAC ¶ 2, ECF No. 25 at Pg ID 1190 (citing <https://static.nhtsa.gov/odi/inv/2021/INOA-PE21021-2820.PDF>).) On November 4, NHTSA issued a Safety Recall Report covering

MY 2019-2020 Ram 2500, 3500, 4500, and 5500 pick-up trucks. (NHTSA Safety Recall Report, ECF No. 30-1.) NHTSA describes:

Some 2019-2020 MY Ram 2500[, 3500, 4500, and 5500] vehicles equipped with the Cummins 6.7L Turbo Diesel engine may have been built with a high pressure fuel pump (“HPFP”) that could fail prematurely.

The suspect period began on October 11, 2018, when Cummins 6.7L Turbo Diesel engines with suspect HPFPs were introduced into vehicle production, and ended on November 13, 2020, when Cummins 6.7L Turbo Diesel engines with suspect HPFPs were no longer used in vehicle production. The suspect period was determined using supplier and vehicle production records. Similar vehicles not included in the recall population are not equipped with the Cummins 6.7L Turbo Diesel engine, or were produced before or after the suspect period.

(*Id.* at 1-3, Pg ID 2064-66.) According to the Safety Recall Report, 222,410 vehicles are affected (*id.*), although Plaintiffs allege that 600,000 vehicles are currently under NHTSA investigation (SAC ¶ 4, ECF No. 25 at Pg ID 1192).

NHTSA’s report reflects that FCA decided to conduct a voluntary safety recall of the affected vehicles. (NHTSA Safety Recall Report at 5, ECF No. 30-1 at Pg ID 2069.) Pursuant to the recall, FCA agreed “to replace the HPFP [high pressure fuel pump], update the Powertrain Control Module (‘PCM’) software, and inspect and, if necessary, replace additional fuel system components.” (*Id.*) FCA also agreed to reimburse owners who incurred the cost of repairing the problem. (*Id.*)

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