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| 18 | listed on signature page) | |
| 19 | UNITED STATE | S DISTRICT COURT |
| • | | RICT OF CALIFORNIA |
| 20 | | SISCO DIVISION |
| 21 | | |
| | MONICA HOLCOMB, BRUCE HOLCOME | |
| 22 | TED SCHRUBBE, GEERT WENES, BRIAN PERELMUTER, JASON CAPIZZI, RALPH | |
| 23 | MAY, WILLIAM BARROIS, CURTIS | |
| 23 | HURST, and JARED STANDIFORD | JURY TRIAL DEMANDED |
| 24 | individually, and on behalf of all others | |
| 25 | similarly situated, | |
| 25 | Plaintiffs, | |
| 26 | vs. | |
| | | |
| 27 | AUDI AG and AUDI OF AMERICA, LLC, | |
| 28 | Defendants. | |
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1

NATURE OF THE CASE

1. Plaintiffs Monica and Bruce Holcomb, Ted Schrubbe, Geert Wenes, Brian 2 Perelmuter, Jason Capizzi, Ralph May, William Barrois, Curtis Hurst, and Jared Standiford 3 4 ("Plaintiffs") individually and on behalf of the other members of the nationwide class and statewide classes defined below (the "Class" or "Classes") bring this Class Action Complaint 5 (the "Complaint") against Defendants Audi AG and Audi of America, LLC ("Defendants" or 6 "Audi") seeking redress and remedy for Audi's practice of equipping certain gasoline vehicles 7 with an illegal "defeat device" designed to evade governmental emissions regulation by tricking 8 the public and regulators into thinking the vehicles emitted far less noxious carbon dioxide gas 9 ("CO₂") than they actually do. Plaintiffs make these allegations upon personal knowledge as to 10 themselves and their own acts and, as to all other matters, upon information and belief. 11

2. Plaintiffs were unaware that the vehicles they purchased are equipped with illegal
defeat devices. These defeat devices are designed to secretly limit carbon dioxide emissions and
to increase fuel efficiency only when the vehicles are subjected to emissions and fuel efficiency
testing. At all other times—that is, when the vehicles are in regular use on the road—the vehicles
emit significantly more CO₂ than Audi advertised and than is allowed by law.

The vehicles containing the illegal CO₂ defeat device include at least those
vehicles Audi equipped with (1) a ZF 8HP55 "AL 551" transmission, including, but not limited
to, the A6, A8, Q5, and Q7 models or (2) a DL 501-7Q "DL 501" transmission, including, but not
limited to, the Audi S4, S5, S6, S7 models (collectively the "Defective Vehicles").

4. Audi sold the Defective Vehicles to Plaintiffs and Class members without
 informing them of the existence of the defeat devices, and by falsely represented to them that the
 Defective Vehicles were compliant with all relevant emissions standards when in normal use.
 Audi also falsely represented the fuel efficiency of the Defective Vehicles.

5. Plaintiffs and Class members suffered damages as a result of Audi's
misrepresentations and omissions regarding the defeat device. Plaintiffs would not have
purchased or leased the Defective Vehicles at all and/or—if the Defective Vehicles' true nature
had been disclosed and mitigated, and the Defective Vehicles rendered legal to sell—would have

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| 1 | paid significantly less for them. At the very least, then, Plaintiffs and Class members overpaid for |
|----|---|
| 2 | their vehicles, which are incapable of providing the balance of performance, fuel efficiency, and |
| 3 | cleanliness that Audi advertised. Plaintiffs and Class members have also suffered diminution of |
| 4 | vehicle value now that the existence of the defeat devices has been revealed. |
| 5 | 6. Plaintiffs and similarly situated owners and lessees of the Defective Vehicles are |
| 6 | entitled to compensation for their losses, including losses related to increased fuel expenditures. |
| 7 | JURISDICTION AND VENUE |
| 8 | 7. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because |
| 9 | at least one Class Member is of diverse citizenship from Audi, there are more than 100 Class |
| 10 | members, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of costs and |
| 11 | interest. |
| 12 | 8. This Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 |
| 13 | because Plaintiffs bring claims under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et |
| 14 | seq. |
| 15 | 9. This Court has personal jurisdiction over Audi because Audi's contacts with the |
| 16 | State of California are systematic, continuous, and sufficient to subject it to personal jurisdiction |
| 17 | in this Court. Specifically, Audi purposefully availed itself of the privilege of conducting |
| 18 | business in the forum state by advertising and selling its manufactured vehicles (including the |
| 19 | Defective Vehicles at issue) within the forum state. Additionally, Audi has maintained systematic |
| 20 | and continuous business contacts within the forum state (including with its authorized dealers |
| 21 | within the State) and is registered to conduct business in the State. |
| 22 | 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a |
| 23 | substantial part of the events and/or omissions giving rise to Plaintiffs' claims occurred within |
| 24 | this District. Audi has marketed, advertised, sold, and leased the Defective Vehicles, and Audi |
| 25 | otherwise conducted extensive business within this District. Plaintiffs Monica and Bruce |
| 26 | Holcomb, as well as many other Class members, purchased their Defective Vehicles from Audi |
| 27 | dealers located in this District. |
| 28 | |

| 1 | PARTIES |
|----|---|
| 2 | <u>Plaintiffs</u> |
| 3 | 11. Plaintiffs MONICA and BRUCE HOLCOMB are citizens of California and |
| 4 | residents of Redwood City, California. Mr. and Mrs. Holcomb purchased their 2007 Audi Q7 |
| 5 | from an Audi dealership in Oakland, California. |
| 6 | 12. Plaintiff TED SCHRUBBE is a citizen of Wisconsin and a resident of Elm Grove, |
| 7 | Wisconsin. Mr. Schrubbe purchased his 2013 Audi Q7 from Audi Exchange in Chicago, Illinois. |
| 8 | 13. Plaintiff GEERT WENES is a citizen of New Mexico and a resident of Santa Fe, |
| 9 | New Mexico. Mr. Wenes purchased his 2013 Audi Q5 from Audi/Mercedes-Benz/Porsche of |
| 10 | Albuquerque, in Albuquerque, New Mexico. |
| 11 | 14. Plaintiff BRIAN PERELMUTER is a citizen of Connecticut and a resident of |
| 12 | Southbury, Connecticut. Dr. Perelmuter purchased his 2016 Audi Q5 2.0T from Valenti Audi in |
| 13 | Watertown, Connecticut. |
| 14 | 15. Plaintiff JASON CAPIZZI is a citizen of New Jersey and a resident of West New |
| 15 | York, New Jersey. Mr. Capizzi leased his 2015 Audi Q5 2.0T from Biener Audi in Great Neck, |
| 16 | New York. |
| 17 | 16. Plaintiff RALPH MAY is a citizen of Pennsylvania and a resident of Union Dale, |
| 18 | Pennsylvania. Mr. May purchased his 2014 Audi Q5 from Audi Newton in Newton, New Jersey. |
| 19 | 17. Plaintiff WILLIAM BARROIS is a citizen of Alabama and a resident of Fairhope, |
| 20 | Alabama. Mr. Barrois purchased his 2012 Audi Q7 from Audi New Orleans in New Orleans, |
| 21 | Louisiana. |
| 22 | 18. Plaintiff CURTIS HURST is a citizen of Pennsylvania and a resident of Yeadon, |
| 23 | Pennsylvania. Mr. Hurst purchased his 2009 Audi A6 from Cutrubus Audi of Layton in Layton, |
| 24 | Utah. |
| 25 | 19. Plaintiff JARED STANDIFORD is a citizen of Arizona and a resident of |
| 26 | Litchfield Park, Arizona. Mr. Standiford purchased his 2017 Audi Q7 from Audi Peoria in |
| 27 | Peoria, Arizona. |
| 28 | |

П

<u>Defendants</u>

2 20. Defendant Audi of America, LLC ("Audi America") is a Delaware limited liability
3 company with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon,
4 Virginia 20171. Audi America is a citizen of Delaware and Virginia. *See* 28 U.S.C.
5 § 1332(d)(10). Audi America is a wholly owned United States subsidiary of Audi AG, and it
6 engages in business, including the advertising, marketing, and sale of Audi automobiles, in all 50
7 states.

8 21. Defendant Audi AG ("Audi AG") is a German corporation with its principal place
9 of business in Ingolstadt, Germany. Audi AG is the parent of Audi of America, LLC and a
10 subsidiary of the Audi Group, which is a wholly owned subsidiary of Volkswagen AG. Audi AG
11 directly controls and directs the actions of Audi of America, LLC. Audi AG designs, develops,
12 manufacturers, and sells luxury automobiles. According to Audi AG, the Audi Group sold more
13 than 200,000 vehicles in the United States in 2015.

14

1

FACTS COMMON TO ALL COUNTS

22. 15 In September 2015, the Environmental Protection Agency and the California Air 16 Resources Board ("CARB") revealed, to the surprise of the entire world, that Audi and its parent, 17 Volkswagen AG, had for years been perpetrating an illegal scheme to hide the true emissions of 18 their "Clean Diesel" vehicles by equipping them with a defeat device. That defeat device allowed 19 the implicated diesel vehicles to detect government testing conditions and emit lower nitrous 20 oxide ("NOx") during testing. At all other times, the diesel engines emitted NOx at well over the 21 legal limits. Litigation followed this discovery, and a little more than one year later, Volkswagen 22 agreed to a \$14.7 billion settlement to compensate those in the United States for the economic and 23 environmental harm it caused. This settlement is one of the largest consumer settlements in 24 United States history.

25 23. In or around July 2016, CARB discovered that Audi had also secretly installed a
 26 defeat device in the Defective Vehicles to deceptively regulate the emission of another noxious
 27 gas: CO₂.¹ This newly-discovered CO2 defeat device is in addition to the NOx defeat device
 28 ¹ German authorities—namely the German Motor Transportation Authority ("KBA")—were not *Footnote continued on next page* 1313923.4 - 4 - CLASS ACTION COMPLAINT CASE NO. 3:16-cv-6648

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| 1 | installed in the "Clean Diesel" vehicles, and was used to circumvent the Defective Vehicles' |
|----|---|
| 2 | emission control systems that exist to comply with U.S. emissions standards. |
| 3 | 24. Audi installed the defeat device in at least the vehicles equipped with one of two |
| 4 | automatic transmissions with the internal designations AL 551 and DL 501 through May 2016. ² |
| 5 | The AL 551 transmission belongs to the ZF 8HP family of eight-speed units Audi sourced from |
| 6 | transmission supplier ZF Friedrichshafen, commonly known as ZF. The DL 501 model Audi |
| 7 | sourced from Volkswagen. The gasoline vehicles that Audi equipped with the AL 551 and DL |
| 8 | 501 transmissions—and, therefore, with the defeat device—include, but may not be limited to, the |
| 9 | Audi A6, A8, Q5, Q7, S4, S5, S6, and S7 models. ³ |
| 10 | 25. Volkswagen and Audi were aware that emissions and fuel consumption were |
| 11 | decisive factors for customers making purchase decisions. In response, Audi began representing |
| 12 | to consumers that its vehicles consumed less fuel and emitted less CO_2 than they actually do in |
| 13 | normal driving conditions. |
| 14 | 26. Audi was able to disguise this deception by programming its engines with the |
| 15 | ability to engage different modes, one of which used significantly less fuel and emitted |
| 16 | significantly less CO ₂ , but also delivered significantly less power. Audi deceptively dubbed this |
| 17 | the "warm-up" strategy, a mode that activates when the Defective Vehicles are started. As long |
| 18 | |
| 19 | Footnote continued from previous page |
| 20 | entirely duped by this scheme. Indeed, they detected irregularities and increased CO_2 emissions in Audi vehicles and questioned Audi about these results. Reports indicate that Audi lied to the |
| 21 | KBA, however, telling them that their vehicles would not contain software allowing them to detect dynamometer testing and alter the vehicles' performance as a result. Based CARB's |
| 22 | revelations, German authorities have renewed their investigations. Kayhan Oezgenc and Jan C. Wehmeyer, <i>This is How the Manufacturer Cheated on CO2</i> , Bild am Sonntag (November 5, |
| 23 | 2016) <u>http://www.bild.de/bild-plus/auto/auto-news/audi/so-schummelte-der-hersteller-bei-co-48621300.bild.html</u> ; <i>Ministry of Transportation Examines Accusations Against Audi,</i> |
| 24 | Handelsblatt (November 7, 2016) <u>http://www.handelsblatt.com/politik/deutschland/abgaswerte-manipulation-verkehrsministerium-prueft-vorwuerfe-gegen-audi/14804236.html</u> . |
| 25 | ² Bertel Schmitt, <i>CARB Finds New Audi Defeat Device</i> , <i>German Newspaper Digs Up Smoking Gun Document</i> , Forbes (November 6, 2016) |
| 26 | http://www.forbes.com/sites/bertelschmitt/2016/11/06/carb-finds-new-audi-defeat-device- german-paper-digs-up-smoking-gun-document/#5f12b7a51ce8. |
| 27 | ³ New Accusation of Cheating Against Audi, Handelsblatt (November 13, 2016) http://www.handelsblatt.com/unternehmen/industrie/manipulation-der-co2-werte-neue- |
| 28 | schummelvorwuerfe-gegen-audi/14835360.html. |
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as the "warm-up" function remains activated, the automatic transmission remains in a "switching
 program" that produces a low engine speed, consumes less fuel, and produces less CO₂.

3 27. Audi also figured out how to activate this low fuel/low emissions/low power mode 4 during governmental tests. Audi engineers concluded that the only time the Defective Vehicles 5 would run continuously with no steering wheel input would be when the vehicles were 6 undergoing examination in a lab, on a test bed. The vehicles' transmission control modules 7 ("TCM") therefore set "shift points" that allow the vehicles to detect those lab conditions and to 8 produce compliant emission results under those conditions (known by Volkswagen as the "dyno 9 calibration" mode).⁴ Under these static dynamometer lab conditions (a vehicle treadmill), the 10 defeat device enables the Defective Vehicles to operate in this low power mode.

11 28. This low power mode, also known as the "low CO₂" program, works by causing
12 the Defective Vehicles to shift gears early to maintain artificially low engine revs and emissions.

At *all other times*—that is, when the Defective Vehicles are actually being driven
under normal conditions—the transmission computer switches to "road calibration" mode which
offers full power to the driver and which results in increased fuel consumption and greater CO₂
emissions. Indeed, the road calibration mode activates once the driver turns the steering wheel 15
degrees, something happens almost immediately under normal driving conditions.

30. This defeat device scheme allowed Audi to deceptively misrepresent the Defective
Vehicles' fuel consumption and CO₂ emissions to governmental authorities and to the consuming
public. A vehicle's advertised fuel economy, which is listed on the "Monroney sticker" or
window sticker, is determined by driving a vehicle over five standardized driving patterns (or
drive cycles), all of which are performed in a laboratory on a dynamometer where the conditions
for all tests can be controlled. These driving cycles include cold starts, hot starts, highway
driving, aggressive and high speed driving, driving with the air conditioner in use under

25

⁴ The defeat device software is imbedded in the TCM. The TCM's primary function is to
establish shift logic by reacting to signals from sensors monitoring coolant temperature, exhaust
temperature, ignition timing, crankshaft and camshaft positioning, fuel mixture and air flow
volumes. The TCM and engine control unit ("ECU") work in tandem to execute the actual cheat

function. The engineers imbedded the cheat software in the TCM unit, intentionally making its detection less probable.

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1 conditions similar to a hot day in the summer in Los Angeles and driving in cold temperatures. 2 Data from the five drive cycles are combined and adjusted for "real world" conditions in a way to 3 represent "City" driving and "Highway" driving. The "combined" fuel economy is the average of 4 the City and Highway values with weights of 55% and 45% respectively. These adjusted and 5 combined values appear on the vehicle's Monroney sticker.

6

31. During each of the drive cycles—all of which are performed in a lab, under the 7 Defective Vehicles' low power/low emissions/low fuel consumption mode—the amount of each 8 pollutant is measured. This includes un-combusted or partially combusted gasoline 9 (hydrocarbons or HC), carbon monoxide (CO) and carbon dioxide (CO₂). The amount of carbon 10 produced is then converted to amount of gasoline which was required to produce the carbon in the 11 exhaust. The amount of gasoline produced during the tests is divided into the distance driven on 12 the test to produce the fuel economy.

Based on this equation, as the amount of CO₂ produced increases, the gasoline 13 32. 14 used increases and the fuel economy decreases. Therefore, if a Defective Vehicle produced less 15 CO_2 during laboratory testing, but higher CO_2 when driven on road, then the vehicle would have 16 better estimated fuel economy represented on the Monroney sticker than the vehicle would 17 actually achieve on road.

18 33. This is exactly what happened here. Again, in simple terms, the defeat device 19 program equips the Defective Vehicles with two modes or personalities. The "dyno calibration" 20 personality reduces fuel supply and limits revolutions per minute ("rpms") per gear, reducing fuel 21 burn and lowering emissions. This was personality engaged during all of the laboratory testing 22 used to calculate the Defective Vehicles' purported fuel economy. The "road calibration," in 23 contrast, personality allows the engine to turn maximum rpms in each gear and provides the 24 necessary (much higher) fuel supply required to deliver advertised torque and performance. This 25 is the personality engaged during all normal driving.

26 34. There is no question that Audi knew what it was doing. Audi commissioned its 27 own study, in fact, which found that a vehicles' fuel consumption on the road increased by 8.5 28 percent after the wheel was turned.

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| 1 | 35. Moreover, high-placed Audi executives knew precisely how the defeat device |
|----------|--|
| 2 | worked, and instructed company employees to utilize it as much as possible to deceive regulators |
| 3 | and the public. Volkswagen and Audi management discussed the defeat device software in detail, |
| 4 | for example, during a "Summer Drive" event in South Africa in the second half of February 2013. |
| 5 | According to the event minutes, Axel Eiser, then the head of Audi's powertrain division (and |
| 6 | currently the head of powertrain development of the entire Volkswagen group) asked: "When will |
| 7 | we have the cycle optimized shift program?" He continued: "The shifting program shall be |
| 8 | designed to be 100% active on the dyno, but only 0.01% in the hands of the customer." ⁵ The |
| 9 | implication of this could not be clearer: Audi executives intended to use, and did in fact use, the |
| 10 | defeat device to mislead regulators and consumers by selectively activating the low power/low |
| 11 | emissions/low fuel consumption mode only in testing conditions. This practice is highly |
| 12 | deceptive and illegal. |
| 13 | TOLLING OF THE STATUTE OF LIMITATIONS |
| 14 | Discovery Rule Tolling |
| 15 | 36. Plaintiffs could not have discovered through reasonable diligence that their |
| 16 | Defective Vehicles were defective within the time period of any applicable statutes of limitation. |
| 17 | 37. Among other things, Plaintiffs did not know and could not have known until |
| 18 | November 7, 2016, when published reports disclosed that the Defective Vehicles are equipped |
| 19 | with defeat devices. Therefore, Plaintiffs' claims and the claims of all Class members did not |
| 20 | accrue until they discovered that the defeat device caused the Defective Vehicles to fail required |
| 21 | emissions standards. |
| 22 | Fraudulent Concealment Tolling |
| 23 | 38. Throughout the time period relevant to this action, Audi concealed from and failed |
| 24 | to disclose to Plaintiffs and the other Class members vital information about the defeat device |
| 25 | equipped on the Defective Vehicles. Indeed, Audi kept Plaintiffs and the other Class members |
| 26 | ignorant of vital information essential to the pursuit of their claims, and as a result, neither |
| 27 28 | ⁵ Kayhan Oezgenc and Jan C. Wehmeyer, <i>This is How the Manufacturer Cheated on CO</i> ₂ , Bild am Sonntag (November 5, 2016) <u>http://www.bild.de/bild-plus/auto/auto-news/audi/so-</u> schummelte-der-hersteller-bei-co-48621300.bild.html |
| | - 8 - CLASS ACTION COMPLAINT |
| | 1313923.4 |

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Plaintiffs nor the other Class members could have discovered the defect, even upon reasonable
 exercise of diligence.

3 39. Prior to the date of this Complaint, Audi knew of the defeat device in the
Defective Vehicles, but continued to manufacture, market, distribute, lease, and/or sell the
Defective Vehicles to Plaintiffs and the other Class members. In doing so, Audi concealed from
or failed to notify Plaintiffs and the other Class members about the true nature of the Defective
Vehicles.

8 40. Plaintiffs and the other Class members justifiably relied on Audi to disclose these
9 material defects in the Audi vehicles they purchased or leased, as such defects were hidden and
10 not discoverable through reasonable efforts by Plaintiffs and the other Class members.

11 41. Thus, the running of all applicable statutes of limitation have been tolled and
12 suspended with respect to any claims that the Plaintiffs and the other Class members have
13 sustained as a result of the defects by virtue of the fraudulent concealment doctrine.

14

Estoppel

42. 15 Audi was under a continuous duty to disclose to Plaintiffs and the other Class 16 members the existence of the defeat device, which substantially affects the true character, quality, 17 performance, and nature of the Defective Vehicles. Audi actively concealed the true character, 18 quality, performance, and nature of the defeat device in the Defective Vehicles, and Plaintiffs and 19 the other Class members reasonably relied upon Audi's knowing and active concealment of these 20 facts. Audi is accordingly estopped from relying on any statute of limitations in defense of this 21 action. For these same reasons, Audi is estopped from relying upon any warranty mileage and 22 age limitations in defense of this action.

23

CLASS ACTION ALLEGATIONS

<u>Nationwide Class</u> All persons and entities within the United States (including its

Territories and the District of Columbia) that purchased or leased a

24 43. Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this action on behalf of themselves
25 and on behalf of a Nationwide Class, defined as:

- 26
- 27

28

1313923.4

Defective Vehicle.

| 1 | 44. In the alternative to the Nationwide Class, and pursuant to Federal Rules of Civil | |
|----|--|--|
| 2 | Procedure Rule 23(c)(5), Plaintiffs seek to represent the following State Classes (collectively the | |
| 3 | "Subclasses") as well as any subclasses or issue classes as Plaintiffs may propose and/or the | |
| 4 | Court may designate at the time of class certification: | |
| 5 | <u>Alabama Class</u> | |
| 6 | All persons and entities in the State of Alabama that purchased or leased a Defective Vehicle. | |
| 7 | <u>Arizona Class</u> | |
| 8 | All persons and entities in the State of Arizona that purchased or leased a Defective Vehicle. | |
| 9 | <u>California Class</u> | |
| 10 | All persons and entities in the State of California that purchased or leased a Defective Vehicle. | |
| 11 | Connecticut Class | |
| 12 | All persons and entities in the State of Connecticut that purchased | |
| 13 | or leased a Defective Vehicle. | |
| 14 | <u>New Jersey Class</u> All persons and entities in the State of New Jersey that purchased | |
| 15 | or leased a Defective Vehicle. | |
| 16 | New Mexico Class All persons and entities in the State of New Mexico that purchased | |
| 17 | or leased a Defective Vehicle. | |
| 18 | Pennsylvania Class | |
| 19 | All persons and entities in the State of Pennsylvania that purchased or leased a Defective Vehicle. | |
| 20 | Wisconsin Class | |
| 21 | All persons and entities in the State of Wisconsin that purchased or leased a Defective Vehicle. | |
| 22 | | |
| 23 | 45. Excluded from all classes are Audi, as well as Audi's employees, affiliates, | |
| 24 | officers and directors, including franchised dealers, any individuals who experienced physical | |
| 25 | injury as a result of the defect at issue in this litigation, and the judge and court staff to whom this | |
| 26 | case is assigned. | |
| 27 | 46. Plaintiffs reserve the right to modify and/or add to the Nationwide and/or State | |
| 28 | Classes prior to class certification. | |
| | - 10 - CLASS ACTION COMPLAINT CASE NO. 3:16-cv-6648 | |

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1

Fed. R. Civ. P. 23(a) Prerequisites

| 2 | 47. Num | erosity. Both the Nationwide and State Classes are | so numerous that joinder |
|----|--|--|-----------------------------|
| 3 | of all members is impracticable. Although, the precise number of Class members is unknown an | | |
| 4 | is within the exclusi | ve control of Audi and its affiliated dealerships, Aud | li has sold at least |
| 5 | 100,000 Defective V | Vehicles in the United States, including thousands in | the State of California. |
| 6 | 48. Com | monality. The Claims of Plaintiffs and the Nationw | vide and State Classes |
| 7 | involve common qu | estions of fact and law that will predominate over ar | ny individual issues. |
| 8 | These common ques | tions include, but are not limited to: | |
| 9 | a. | Whether the Defective Vehicles that Audi designed | ed, manufactured, |
| 10 | | marketed, distributed, leased, and/or sold contained | ed a concealed defeat |
| 11 | | device and emitted unlawful levels of carbon diox | tide during their normal |
| 12 | | use; | |
| 13 | b. | Whether Audi designed, manufactured, marketed | , distributed, leased, |
| 14 | | and/or sold the Defective Vehicles and/or their en | nissions-related systems, |
| 15 | | including defeat devices, in the United States; | |
| 16 | с. | Whether Audi knew or should have known of the | defeat device at the time |
| 17 | | of designing, marketing, distributing, leasing, and | /or selling the Defective |
| 18 | | Vehicles; | |
| 19 | d. | Whether Audi knew or should have known that it | s representations |
| 20 | | regarding the emissions and/or fuel efficiency of | the Defective Vehicles |
| 21 | | were false at the time of designing, marketing, dis | stributing, leasing, and/or |
| 22 | | selling the Defective Vehicles; | |
| 23 | e. | Whether the true nature of the Defective Vehicle' | s performance, emissions |
| 24 | | levels, fuel economy, and the inclusion of the defe | eat device constitute |
| 25 | | material facts that reasonable consumers would have | ave considered in |
| 26 | | deciding whether to purchase a Defective Vehicle | ; |
| 27 | f. | Whether Audi's conduct violates consumer protect | ction statutes and other |
| 28 | | laws as asserted herein; | |
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|----|--|
| | |
| 1 | g. Whether Plaintiffs and the other Class members overpaid for their |
| 2 | Defective Vehicles; |
| 3 | h. Whether Audi had a duty to disclose the true nature of the Defective |
| 4 | Vehicles to Plaintiffs and the other Class members; |
| 5 | i. Whether Audi omitted, actively concealed, and/or failed to disclose |
| 6 | material facts about the Defective Vehicles; |
| 7 | j. Whether concealment of the true nature of the Defective Vehicles would |
| 8 | have induced a reasonable consumer to act to their detriment by purchasing |
| 9 | and/or leasing the Defective Vehicles; |
| 10 | k. Whether the Defective Vehicles can be manufactured to comply with |
| 11 | federal and state emission standards without degrading their performance |
| 12 | and/or efficiency; |
| 13 | 1. Whether Plaintiffs and the other Class members are entitled to equitable |
| 14 | relief, including, but not limited to, restitution and injunctive relief; and |
| 15 | m. Whether Plaintiffs and the other Class members are entitled to damages |
| 16 | and other monetary relief and, if so, in what amount; |
| 17 | 49. Typicality. Plaintiffs' claims are typical of Nationwide and State Classes |
| 18 | Members' claims. As described herein, Plaintiffs and the other Class members purchased or |
| 19 | leased a Defective Vehicle, which was designed, manufactured, marketed, distributed, leased, |
| 20 | and/or sold by Audi. Plaintiffs' and the other Class members have been damaged by Audi's |
| 21 | illegal conduct. Plaintiffs' and the other Class members have incurred similar or identical losses |
| 22 | relating to the Defective Vehicles. Furthermore, the factual bases of Audi's misconduct are |
| 23 | common to all Class members and represent a common thread of misconduct resulting in injury to |
| 24 | all Class members. |
| 25 | 50. Adequacy. Plaintiffs will fully and adequately represent and protect the interests |
| 26 | of the Nationwide and State Classes because they share common interests with Class members as |
| 27 | a result of Audi's illegal conduct. |
| 28 | |

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51. Plaintiffs have retained counsel with experience in complex, commercial, multi party, mass tort, consumer, and class action litigation. Plaintiffs' counsel have prosecuted dozens
 of complex class actions, including those involving defective automobiles, in state and federal
 courts across the country.

5 52. Plaintiffs and their counsel are committed to vigorously prosecuting this action on
behalf of the Classes and have the financial resources to do so. Neither Plaintiffs nor their
7 counsel have interests adverse to those of the Classes.

8

Fed. R. Civ. P. 23(b) Prerequisites

53. 9 Predominance. Questions of law and fact common to the Nationwide and State 10 Classes, including those listed above, predominate over questions affecting individual members, 11 and a class action is superior to other available methods for the fair and efficient adjudication of 12 this controversy. Individual damages on the matter can be readily calculated. Thus, the question 13 of individual damages will not predominate over legal and factual questions common to the 14 Nationwide and State Classes. Additionally, Audi has acted or refused to act on grounds that 15 apply generally to the Nationwide and State Classes, so that final injunctive relief and/or 16 corresponding declaratory relief is appropriate with respect to the Nationwide and State Classes.

17 54. **Superiority.** Audi's scheme treated consumers as a Class to be uniformly 18 deceived. A class action is superior to all other available methods for the fair and efficient 19 adjudication of this controversy. Plaintiffs and Class members have all suffered and will continue 20 to suffer economic harm and damage as a result of Audi's unlawful and wrongful conduct, which 21 was directed toward Class members and the public as a whole, rather than specifically or uniquely 22 against any individual Class members. Absent a class action, most Class members would likely 23 find the cost of litigating their claims prohibitively high and would therefore have no effective 24 remedy at law. Because of the relatively small size of the individual Class members' claims, it is 25 likely that only a few Class members could afford to seek legal redress for Defendants' 26 misconduct. Absent a class action, Class members will continue to incur damages, and 27 Defendants' misconduct will continue without effective remedy.

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| 1 | 55. Declaratory and Injunctive Relief. Classwide declaratory, equitable, and | |
|----|--|--|
| 2 | injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Audi has acted on | |
| 3 | grounds that apply generally to the Class, and inconsistent adjudications with respect to Audi's | |
| 4 | liability would establish incompatible standards and substantially impair or impede the ability of | |
| 5 | Class members to protect their interests. Classwide relief and Court supervision under Rule 23 | |
| 6 | assures fair, consistent, and equitable treatment and protection of all Class members, and | |
| 7 | uniformity and consistency in Audi's discharge of its duties to perform corrective action | |
| 8 | regarding the Defective Vehicles. | |
| 9 | CLAIMS FOR RELIEF | |
| 10 | <u>COUNT I</u> | |
| 11 | Violation of Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq. | |
| 12 | (On Behalf of the Nationwide Class) | |
| 13 | 56. Plaintiffs incorporate by reference all allegations in this Complaint as though fully | |
| 14 | set forth herein. | |
| 15 | 57. Plaintiffs bring this Count on behalf of themselves and the Nationwide Class. | |
| 16 | 58. This Court has jurisdiction to decide claims brought under the Magnuson-Moss | |
| 17 | Warranty Act (for the purpose of this Count, the "Act") by virtue of 28 U.S.C. § 1332(a)-(d). | |
| 18 | 59. Defendants are "supplier[s]" and "warrantor[s]" within the meaning of 15 U.S.C. | |
| 19 | § 2301(4) and (5) because the company regularly sells Audi vehicles accompanied by the written | |
| 20 | Limited Warranties. | |
| 21 | 60. Plaintiffs and the other Class members are "consumers" who purchased "consumer | |
| 22 | products" for purposes of 15 U.S.C. § 2301(1) and (3) because they purchased Defective Vehicles | |
| 23 | for personal, family, or household purposes. | |
| 24 | 61. The Defective Vehicles are "consumer products" within the meaning of the Act. | |
| 25 | 15 U.S.C. § 2301(1). | |
| 26 | 62. The Act provides a cause of action for any consumer who is damages by the | |
| 27 | failure of a warrantor to comply with a written or implied warranty. 15 U.S.C. § 2310(d)(1) | |
| 28 | | |
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1 63. The amount in controversy of the Plaintiffs' individual claims meets or exceeds 2 \$25.00 in value. In addition, the amount in controversy meets or exceeds \$50,000 in value 3 (exclusive of interest and costs) on the basis of all claims to be determined in this suit. 4 64. Under the Act, damaged "consumers" have a private cause of action against any 5 warrantor that fails to comply with a written or implied warranty. 6 65. Audi provided Plaintiffs and the Nationwide Class with two express warranties: 7 (1) "bumper-to-bumper" limited express warranty coverage for a minimum of four years or 8 50,000 miles, whichever comes first, and which covers emission related repairs; and (2) a federal

9 emissions warranty that covers the repair and replacement of all emission control and emission10 related parts for two years or 24,000 miles (whichever comes first), and covers specified major
11 emission control components, including catalytic converters, electronic emissions control unit or
12 computer and on-board emissions diagnostic device or computer for 8 years or 80,000 miles
13 (whichever comes first). These express warranties constitute written warranties within the
14 meaning of 15 U.S.C. § 2301(6). The Defective Vehicles' implied warranties are covered by 15
15 U.S.C. § 2301(7).

- 16 66. The terms of written warranties and implied warranty became part of the basis of
 17 the bargain between Plaintiffs and all other Class members when deciding to purchase a
 18 Defective Vehicle.
- Audi breached these written and implied warranties as described in detail above.
 Without limitation, the Defective Vehicles share a common design defect in that they emit more
 carbon dioxide than: (a) is allowable under the applicable regulations, and (b) Audi represented
 were emitted to their customers, the public, and regulators.
- 68. Plaintiffs and each of the other Nationwide Class members have had sufficient
 direct dealings with either Audi or its agents (including Audi dealerships) to establish privity of
 contract between Audi, on the one hand, and Plaintiffs and each of the other Nationwide Class
 members, on the other hand. Nonetheless, privity is not required here because Plaintiffs and each
 of the other Nationwide Class members are intended third-party beneficiaries of contracts
 between Audi and its dealers, and specifically, of Audi's implied warranties. The dealers were not

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1 intended to be the ultimate consumers of the Defective Vehicles and have no rights under the warranty agreements provided with the Defective Vehicles; the warranty agreements were 2 3 designed for and intended to benefit the consumers only.

- 4 69. Affording Audi a reasonable opportunity to cure its breach of written warranties 5 would be unnecessary and futile here. At the time of sale or lease of each Defective Vehicle, 6 Audi knew, should have known, or was reckless in not knowing of its misrepresentations 7 concerning the Defective Vehicles' inability to perform as warranted, but nonetheless failed to 8 rectify the situation and/or disclose the design defect. Under the circumstances, the remedies 9 available under any informal settlement procedure would be inadequate and any requirement that 10 Plaintiffs resort to an informal dispute resolution procedure and/or afford Audi a reasonable 11 opportunity to cure its breach of warranties is excused and thereby deemed satisfied.
- 12

70. As a direct and proximate result of Audi's breach of the written warranties and the 13 implied warranty of merchantability, Plaintiffs and Class members have suffered damages in an 14 amount to be determined at trial.

15 71. Plaintiffs, individually and on behalf of the Nationwide Class, seek all damages 16 permitted by law, including compensation for the monetary difference between the Defective 17 Vehicles as warranted and as sold; compensation for the reduction in resale value; the cost of 18 purchasing, leasing, or renting replacement vehicles, along with all other incidental and 19 consequential damages, statutory attorney fees, and all other relief allowed by law.

- 20
- 21

Frand

(On Behalf of the Nationwide Class or, in the Alternative, the Subclasses)

22 72. Plaintiffs incorporate by reference all allegations in this Complaint as though fully 23 set forth herein.

24 73. Plaintiffs bring this Count on behalf of themselves and the Nationwide Class or, in 25 the alternative, on behalf of the Subclasses.

26 74. As alleged above, Defendants intentionally concealed and suppressed material 27 facts concerning the illegality and quality of the Defective Vehicles in order to defraud and 28 mislead both regulators and the Class about the true nature of the Defective Vehicles. Audi

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accomplished their scheme by installing, aiding in the installation of, and/or failing to disclose the
defeat devices in the Defective Vehicles that caused the vehicles to operate in a low-emission test
mode only during testing. During normal operation and use, the Defective Vehicles emitted
significantly larger quantities of carbon dioxide. The result was precisely what Audi intended—
the Defective Vehicles were able to pass emission testing by way of deliberately induced false
readings and thus successfully imported and sold and/or leased thousands of unwitting American
consumers.

8

9

75. Audi represented that the Defective Vehicles had functioning emissions systems that operated within legal limits during normal driving conditions.

10 76. Audi's false representations and omissions were material to consumers, as they
11 concerned the legality and marketing features of the Defective Vehicles.

12 77. Plaintiffs and Class members reasonably relied on Audi's deception, and Audis
13 intended that they would so rely. Plaintiffs and Class members had no way of discerning that
14 Defendants were, in fact, deceiving them because the defeat devices were sophisticated
15 technology that could not be discerned by regulators, much less consumers.

78. Audi's scheme to design and install defeat device software in the Defective
Vehicles for the specific purpose of circumventing U.S. law, and then concealing their fraudulent
scheme, reveals a corporate culture that emphasized sales and profits over integrity and public
health.

20

79. Audi had a duty to disclose the defeat devices to regulators and the public.

21 80. Audi hatched the deceptive scheme and knew that its customers, including
22 Plaintiff and Class members, did not know about, and could no reasonably discover, its scheme.

23

24

25

81. Plaintiffs and Class members were not aware of the concealed and misrepresented material facts referenced above, and they would not have acted as they did had regulators or the driving public known the truth.

26 82. As a direct and proximate result of Audi's fraudulent scheme, Plaintiffs and Class
27 members sustained damages. They own or lease Defective Vehicles that are non-compliant and
28 severely diminished in value as compared to the vehicles that were advertised or marketed.

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Moreover, the Defective Vehicles either cannot be repaired to comply with applicable emissions
 standards, or if they can be made compliant, their performance, fuel efficiency, and longevity will
 be compromised.

Audi is liable to Plaintiffs and Class members for damages in an amount to be
proven at trial. Moreover, because Audi acted wantonly, maliciously, oppressively, recklessly,
deliberately, and with intent to defraud Plaintiff and Class members for the purpose of enriching
themselves at Plaintiff and Class members' detriment, Audi's conduct warrants substantial
punitive and exemplary damages in an amount to be determined at trial.

- 9
- 10

<u>COUNT III</u> Breach of Contract (On Behalf of the Nationwide Class or, in the Alternative, the Subclasses)

11 84. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
12 set forth herein.

13 85. Plaintiffs bring this Count on behalf of themselves and the Nationwide Class or, in
14 the alternative, on behalf of the Subclasses.

15 86. Every purchase or lease of a Defective Vehicle from an authorized dealer of Audi
16 constitutes a contract between Audi and the purchaser or lessee. Audi materially breached these
17 contracts by selling or leasing Plaintiffs and all other Class members defective, non-compliant
18 Defective Vehicles and by misrepresenting or failing to disclose the existence of the defeat
19 device, rendering the Defective Vehicles substantially less valuable than the vehicles that the
20 Defendants advertised and promised to deliver to Plaintiffs and the other Class members.

87. Audi's misrepresentations and omissions alleged herein caused Plaintiffs and the
other Class members to enter into their agreements to purchase or lease their Defective Vehicles.
Absent those misrepresentations and omissions, Plaintiffs and other Class members would not
have purchased or leased their Defective Vehicles and/or would not have purchased or leased
their Defective Vehicles at the prices they paid. Accordingly Plaintiffs and other Class members
overpaid for their Defective Vehicles and did not receive the benefit of their bargain.

27 88. Audi also breached their implied covenant of good faith and fair dealing under the
28 laws of all 50 states and the District of Columbia. By delivering a vehicle that contained defeat

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| 1 | device softw | are and thus exceeded, during normal use, federal and state emission limits, Audi |
|----|----------------|--|
| 2 | violated Plai | ntiffs and the other Class members' fair and reasonable expectations under their |
| 3 | respective co | ontracts. In addition, Audi's misrepresentations and omissions violated Audi's |
| 4 | implied duty | to deal honestly, and within reasonable commercial standards of fair dealing, with |
| 5 | Plaintiffs and | d the other Class members. |
| 6 | 89. | As a direct and proximate result of Audi's breach, Plaintiffs and the other Class |
| 7 | members hav | we been damaged in an amount to be proven at trial, which shall include, but is not |
| 8 | limited to, al | l compensatory damages, incidental and consequential damages, and other damages |
| 9 | allowed by la | aw. |
| 10 | | COUNT IV |
| 11 | (0 | Unjust Enrichment In Behalf of the Nationwide Class or, in the Alternative, the Subclasses) |
| 12 | 90. | Plaintiffs incorporate by reference all allegations in this Complaint as though fully |
| 13 | set forth here | ein. |
| 14 | 91. | Plaintiffs bring this Count on behalf of themselves and the Nationwide Class or, in |
| 15 | the alternativ | ve, on behalf of the Subclasses. |
| 16 | 92. | Audi benefitted from selling and leasing, at an unjust profit, Defective Vehicles |
| 17 | that had artif | icially inflated values due to Audi's concealment of the defeat device, and Plaintiffs |
| 18 | and the other | Class members have overpaid for these vehicles. |
| 19 | 93. | Audi received and retained unjust benefits from the Plaintiffs and the other Class |
| 20 | members, an | d inequity has resulted. |
| 21 | 94. | It is inequitable and unconscionable for Audi to retain these benefits. |
| 22 | 95. | Because Audi concealed their fraud and deception, Plaintiffs and the other Class |
| 23 | members we | re not aware of the true facts concerning the Defective Vehicles and did not benefit |
| 24 | from Audi's | misconduct. |
| 25 | 96. | Audi knowingly accepted the unjust benefits of their fraudulent conduct. |
| 26 | 97. | As a result of Audi's misconduct, the mount of their unjust enrichment should be |
| 27 | disgorged an | d returned to Plaintiffs and the other Class members, in an amount to be proven at |
| 28 | trial. | |
| | | |

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| | |
| 1 | <u>COUNT V</u> |
| 2 | Violation of the Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, et seq. |
| 3 | (On Behalf of the Alabama Člass) |
| 4 | 98. Plaintiffs incorporate by reference all allegations in this Complaint as though fully |
| 5 | set forth herein. |
| 6 | 99. Plaintiff William Barrois (for the purpose of this Count, "Plaintiff") brings this |
| 7 | Count on behalf of himself and the Alabama Class. |
| 8 | 100. Plaintiff and the Alabama Class members are "consumers" within the meaning of |
| 9 | Ala. Code § 8-19-3(2). |
| 10 | 101. Plaintiff, the Alabama Class members, and Audi are "persons" within the meaning |
| 11 | of Ala. Code § 8-19-3(5). |
| 12 | 102. The Defective Vehicles are "goods" within the meaning of Ala. Code § 8-19-3(3). |
| 13 | 103. Audi was and is engaged in "trade or commerce" within the meaning of Ala. Code |
| 14 | § 8-19-3(8). |
| 15 | 104. The Alabama Deceptive Trade Practices Act ("Alabama DTPA") declares several |
| 16 | specific actions to be unlawful, including: "(5) Representing that goods or services have |
| 17 | sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not |
| 18 | have," "(7) Representing that goods or services are of a particular standard, quality, or grade, or |
| 19 | that goods are of a particular style or model, if they are of another," and "(27) Engaging in any |
| 20 | other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or |
| 21 | commerce." Ala. Code § 8-19-5. |
| 22 | 105. In the course of its business, Audi concealed and suppressed material facts |
| 23 | concerning the Defective Vehicles. Audi accomplished this by installing a defeat device in the |
| 24 | Defective Vehicles that caused the vehicles to operate in a low emission test mode only during |
| 25 | emissions testing. During normal operations, the Defective Vehicles would emit larger quantities |
| 26 | of noxious CO ₂ . The result was what Audi intended—the Defective Vehicles passed emissions |
| 27 | testing by way of deliberately induced false readings. |
| 28 | |

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| 1 | 106. | 106. Plaintiff and Alabama Class members had no way of discerning that Audi's | |
|----------|--|--|--|
| 2 | representations were false and misleading because Audi's defeat device software was extremely | | |
| 3 | sophisticated | echnology. Plaintiffs and Alabama Class members did not and could not unravel | |
| 4 | Audi's decept | ion on their own. | |
| 5 | 107. | Audi thus violated the Alabama DTPA by, at minimum: representing that | |
| 6 | Defective Vel | icles have characteristics, uses, benefits, and qualities which they do not have; | |
| 7 | representing t | nat Defective Vehicles are of a particular standard, quality, and grade when they are | |
| 8 | not; advertisin | g Defective Vehicles with the intent not to sell or lease them as advertised; and | |
| 9 | representing t | nat the subject of a transaction involving Defective Vehicles has been supplied in | |
| 10 | accordance w | th a previous representation when it has not. | |
| 11 | 108. | Audi intentionally and knowingly misrepresented material facts regarding the | |
| 12 | Defective Vel | icles with intent to mislead Plaintiff and the Alabama Class. | |
| 13 | 109. | Audi knew or should have known that its conduct violated the Alabama DTPA. | |
| 14 | 110. Audi owed Plaintiff and the Alabama Class a duty to disclose the illegality, public | | |
| 15 | health and saf | ety risks, the true nature of the Defective Vehicles, because Audi: | |
| 16 17 | | a. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with regulations; | |
| 18 | | b. intentionally concealed the foregoing from regulators, Plaintiff, and/or Class members; and/or | |
| 19 | | c. made incomplete representations about the Defective Vehicles generally, | |
| 20 | | and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these | |
| 21 | | representations. | |
| 22 | 111. | Audi fraudulent use of the "defeat device" and its concealment of the true | |
| 23 | characteristics of the Defective Vehicles' fuel consumption and CO ₂ emissions were material to | | |
| 24 | Plaintiff and the Alabama Class. | | |
| 25 | 112. Audi's unfair or deceptive acts or practices were likely to and did in fact deceive | | |
| 26 | regulators and | reasonable consumers, including Plaintiff. | |
| 27 | 113. | Plaintiff and the Alabama Class suffered ascertainable loss and actual damages as | |
| 28 | a direct and p | oximate result of Audi's misrepresentations and its concealment of and failure to | |
| | 1313923.4 | - 21 - Class action complaint Case NO. 3:16-cv-6648 | |

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| 1 | disclose material information. Plaintiff and the Alabama Class members who purchased or leased |
|----|--|
| 2 | the Defective Vehicles would not have purchased or leased them at all and/or-if the Vehicles' |
| 3 | true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell-would have |
| 4 | paid significantly less for them. Plaintiff and the Alabama Class also suffered diminished value |
| 5 | of their vehicles, as well as lost or diminished use. |
| 6 | 114. Audi was provided notice of these issues through various legal complaints, |
| 7 | including the instant complaint, and Plaintiffs will also send a letter complying with Ala. Code § |
| 8 | 8-19-10(e). If Audi fails to remedy its unlawful conduct within the requisite time period, |
| 9 | Plaintiffs will amend this Complaint or seek leave to amend this Complaint to seek all damages |
| 10 | and relief to which Plaintiffs and the Alabama Class are entitled. |
| 11 | <u>COUNT VI</u> |
| 12 | Violation of the Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1521, et seq. |
| 13 | (On Behalf of the Arizona Class) |
| 14 | 115. Plaintiffs incorporate by reference all allegations in this Complaint as though fully |
| 15 | set forth herein. |
| 16 | 116. Plaintiff Jared Standiford (for the purpose of this Count, "Plaintiff") brings this |
| 17 | Count on behalf of himself and the Arizona Class. |
| 18 | 117. Audi, Plaintiff, and the Arizona Class members are "persons" within the meaning |
| 19 | of the Arizona Consumer Fraud Act ("Arizona CFA"), Ariz. Rev. Stat. § 44-1521(6). |
| 20 | 118. The Defective Vehicles are "merchandise" within the meaning of Ariz. Rev. Stat. |
| 21 | § 44-1521(5). |
| 22 | 119. The Arizona CFA provides that "[t]he act, use or employment by any person of |
| 23 | any deception, deceptive act or practice, fraud, misrepresentation, or concealment, suppression |
| 24 | or omission of any material fact with intent that others rely upon such concealment, suppression |
| 25 | or omission, in connection with the sale of any merchandise whether or not any person has in |
| 26 | fact been misled, deceived or damaged thereby, is declared to be an unlawful practice." Ariz. |
| 27 | Rev. Stat. § 44-1522(A). |
| 28 | |
| | |

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| 1 | 120. In the course of its business, Audi concealed and suppressed material facts | | |
|----|--|---|---|
| 2 | concerning the Defective Vehicles. Audi accomplished this by installing an illegal defeat device | | |
| 3 | the Defective | Vehicles that caused the vehicles to operate in a low emission | on test mode only |
| 4 | during emissi | ons testing. During normal operations, the Defective Vehicle | es would emit grossly |
| 5 | larger quantit | es of noxious CO ₂ gasses. The result was what Audi intende | ed—the Defective |
| 6 | Vehicles pass | ed emissions testing by way of deliberately induced false rea | dings. |
| 7 | 121. | Plaintiff and Arizona Class members had no way of discern | ing that Audi's |
| 8 | representation | s were false and misleading because Audi's defeat device so | ftware was extremely |
| 9 | sophisticated | technology. Plaintiff and Arizona Class members did not an | d could not unravel |
| 10 | Audi's decep | ion on their own. | |
| 11 | 122. Audi thus violated the Arizona CFA by, at minimum: employing deception, | | oying deception, |
| 12 | deceptive acts | or practices, fraud, misrepresentations, or concealment, sup | pression or omission of |
| 13 | any material | act with intent that others rely upon such concealment, suppl | ression or omission, in |
| 14 | connection w | th the sale of Defective Vehicles. | |
| 15 | 123. Audi intentionally and knowingly misrepresented material facts regarding the | | facts regarding the |
| 16 | Defective Vehicles with intent to mislead Plaintiff and the Arizona Class. | | |
| 17 | 124. Audi knew or should have known that its conduct violated the Arizona CFA. | | |
| 18 | 125. Audi owed Plaintiff and the Arizona Class a duty to disclose the illegality, public | | |
| 19 | health and sat | ety risks, the true nature of the Defective Vehicles, because | Audi: |
| 20 | | a. possessed exclusive knowledge that they were manu distributing vehicles throughout the United States th | |
| 21 | | regulations; | at the not comply with |
| 22 | | b. intentionally concealed the foregoing from regulator members; and/or | rs, Plaintiff, and Class |
| 23 | | c. made incomplete representations about the Defectiv | e Vehicles generally, |
| 24 | | and the use of the defeat device in particular, while withholding material facts from Plaintiffs that contr | purposefully |
| 25 | | representations. | adicted mese |
| 26 | 126. | Audi fraudulent use of the "defeat device" and its concealm | nent of the true |
| 27 | characteristics of the Defective Vehicles' fuel consumption and CO ₂ emissions were material to | | sions were material to |
| 28 | Plaintiff and t | he Arizona Class. | |
| | 1313923.4 | - 23 - | CLASS ACTION COMPLAINT CASE NO. 3:16-cv-6648 |

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| 1 | 127. Audi's unfair or deceptive acts or practices were likely to and did in fact deceive | | |
|----|--|--|--|
| 2 | regulators and reasonable consumers, including Plaintiff. | | |
| 3 | 128. Plaintiff and the Arizona Class suffered ascertainable loss and actual damages as a | | |
| 4 | direct and proximate result of Audi's misrepresentations and its concealment of and failure to | | |
| 5 | disclose material information. Plaintiff and the Arizona Class members who purchased or leased | | |
| 6 | the Defective Vehicles would not have purchased or leased them at all and/or-if the Vehicles' | | |
| 7 | true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell-would have | | |
| 8 | paid significantly less for them. Plaintiff and the Arizona Class also suffered diminished value of | | |
| 9 | their vehicles, as well as lost or diminished use. | | |
| 10 | 129. Plaintiff and the Arizona Class seek monetary relief against Defendants in an | | |
| 11 | amount to be determined at trial. Plaintiff and the Arizona Class also seek punitive damages | | |
| 12 | because Audi engaged in aggravated and outrageous conduct with an evil mind. | | |
| 13 | 130. Plaintiff also seeks an order enjoining Audi's unfair, unlawful, and/or deceptive | | |
| 14 | practices, attorneys' fees, and any other just and proper relief available under the Arizona CFA. | | |
| 15 | <u>COUNT VII</u> | | |
| 16 | Violation of Song-Beverly Consumer Warranty Act, Breach of Implied Warranty, Cal Civ. Code §§ 1790, <i>et seq.</i> (On Behalf of the California Class) | | |
| 17 | (On Benair of the California Class) | | |
| 18 | 131. Plaintiffs incorporate by reference all allegations in this Complaint as though fully | | |
| 19 | set forth herein. | | |
| 20 | 132. Plaintiffs Monica and Bruce Holcomb (for the purpose of this Count and all other | | |
| 21 | Counts brought on behalf of the California Class, "Plaintiffs") bring this Count on behalf of | | |
| 22 | themselves and the California Class. | | |
| 23 | 133. Plaintiffs and the other members of the California Class who purchased Defective | | |
| 24 | Vehicles in California are "buyers" within the meaning of Cal. Civ. Code § 1791. | | |
| 25 | 134. The Defective Vehicles are "consumer goods" within the meaning of Cal. Civ. | | |
| 26 | Code § 1791(a). | | |
| 27 | 135. Audi is the "manufacturer" of the Defective Vehicles within the meaning of Cal. | | |
| 28 | | | |
| 20 | Civ. Code § 1791(j). | | |

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| 1 | 136. Audi impliedly warranted to Plaintiffs and the other members of the California | |
|----|--|--|
| 2 | Class that the Defective Vehicles were "merchantable" within the meaning of Cal. Civ. Code | |
| 3 | §§ 1791.1(a) & 1792; however, the Defective Vehicles do not have the quality that a buyer would | |
| 4 | reasonably expect. | |
| 5 | 137. Cal. Civ. Code § 1791.1(a) states: "Implied warranty of merchantability" or | |
| 6 | "implied warranty that goods are merchantable" means that the consumer goods meet each of the | |
| 7 | following: | |
| 8 | (1) Pass without objection in the trade under the contract description. | |
| 9 | (2) Are fit for the ordinary purposes for which such goods are used. | |
| 10 | (3) Are adequately contained, packaged, and labeled. | |
| 11 | (4) Conform to the promises or affirmations of fact made on the container or | |
| 12 | label. | |
| 13 | 138. The Defective Vehicles would not pass without objection in the automotive trade | |
| 14 | because they share a common design defect in that they are equipped with "defeat devices." | |
| 15 | These defeat devices are designed to secretly limit emissions and increase fuel efficiency when | |
| 16 | the vehicles are being subject to regulatory emissions and fuel efficiency testing. However, when | |
| 17 | the Defective Vehicles are in regular use on the road, they emit a substantially increased amount | |
| 18 | of noxious gasses. | |
| 19 | 139. Defective Vehicles are not adequately labeled because the labeling fails to disclose | |
| 20 | the fact that they are defective. | |
| 21 | 140. In the various channels of information through which Audi sold Defective | |
| 22 | Vehicles, Audi failed to disclose material information concerning the Defective Vehicles, which | |
| 23 | it had a duty to disclose. Audi had a duty to disclose the defect because, as detailed above: (a) | |
| 24 | Audi knew about the defect; (b) Audi had exclusive knowledge of material facts not known to the | |
| 25 | general public, Plaintiffs, or the other California Class members; and (c) Audi actively concealed | |
| 26 | material facts concerning the fact that the Defective Vehicles were equipped with defeat devices | |
| 27 | from the general public, Plaintiffs, and the California Class members. As detailed above, Audi | |
| 28 | | |
| | | |

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| 1 | knew the information concerning the defect at the time of advertising and selling the Defective | | |
|----|--|---|--|
| 2 | Vehicles, all of which was intended to induce consumers to purchase the Defective Vehicles. | | |
| 3 | 141. Audi breached the implied warranty of merchantability by manufacturing and | | |
| 4 | selling Defective Vehicles that are defective. Furthermore, this defect has caused Plaintiffs and | | |
| 5 | the other members of the California Class to not receive the benefit of their bargain and have | | |
| 6 | caused the Defective Vehicles to depreciate in value. | | |
| 7 | 142. Plaintiffs and the other members of the California Class have been damaged as a | | |
| 8 | result of the diminished value of Audi's products. | | |
| 9 | 143. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and other members of the | | |
| 10 | California Class are entitled to damages and other legal and equitable relief including, at their | | |
| 11 | election, the purchase price of their Defective Vehicles, or the overpayment or diminution in | | |
| 12 | value of their Defective Vehicles. | | |
| 13 | 144. Under Cal. Civ. Code § 1794, Plaintiffs and the other members of the California | | |
| 14 | Class are entitled to costs and attorneys' fees. | | |
| 15 | <u>COUNT VIII</u> Winterfahre Same Branche Grannen Brancher franzen Warmanter | | |
| 16 | Violation of the Song-Beverly Consumer Protection Act, Breach of Express Warranty, Cal Civ. Code §§ 1790, <i>et seq.</i> (On Behalf of the California Class) | | |
| 17 | (On Benan of the Camorina Class) | | |
| 18 | 145. Plaintiffs incorporate by reference all allegations in this Complaint as though fully | у | |
| 19 | set forth herein. | | |
| 20 | 146. Plaintiffs Monica and Bruce Holcomb bring this Count on behalf of themselves | | |
| 21 | and the California Class. | | |
| 22 | 147. Plaintiffs and the other members of the California Class who purchased or leased | | |
| 23 | the Defective Vehicles in California are "buyers" within the meaning of California Civil Code | | |
| 24 | § 1791(b). | | |
| 25 | 148. The Defective Vehicles are "consumer goods" within the meaning of California | | |
| 26 | Civil Code § 1791(a). | | |
| 27 | 149. Audi is a "manufacturer" of the Defective Vehicles within the meaning of | | |
| 28 | California Civil Code § 1791(j). | | |
| | - 26 - CLASS ACTION COMPLAINT CASE NO. 3:16-cv-6648 | | |

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| 1 | 150. Audi made express warranties to Plaintiffs and the other members of the California | | | |
|----|---|--|--|--|
| 2 | Class within the meaning of California Civil Code §§ 1791.2 and 1793.2, as described above. | | | |
| 3 | 151. As set forth above in detail, the Defective Vehicles are inherently defective in that | | | |
| 4 | they are equipped with "defeat devices." These defeat devices are designed to secretly limit | | | |
| 5 | emissions and increase fuel efficiency when the vehicles are being subject to regulatory emissions | | | |
| 6 | and fuel efficiency testing. However, when the Defective Vehicles are in regular use on the road, | | | |
| 7 | they emit a substantially increased amount of noxious gasses. The installation of the defeat | | | |
| 8 | device substantially impairs the use and value of the Defective Vehicles to reasonable consumers. | | | |
| 9 | 152. As a result of Audi's breach of their express warranties, Plaintiffs and the other | | | |
| 10 | members of the California Class received goods whose defect substantially impairs their value to | | | |
| 11 | Plaintiffs and the other members of the California Class. Plaintiffs and the other members of the | | | |
| 12 | California Class have been damaged as a result of, inter alia, the diminished value of Audi's | | | |
| 13 | products. | | | |
| 14 | 153. Pursuant to California Civil Code §§ 1793.2 & 1794, Plaintiffs and the other | | | |
| 15 | members of the California Class are entitled to damages and other legal and equitable relief | | | |
| 16 | including, at their election, the purchase price of their Defective Vehicles, or the overpayment or | | | |
| 17 | diminution in value of their Defective Vehicles. | | | |
| 18 | 154. Pursuant to California Civil Code § 1794, Plaintiffs are entitled to costs and | | | |
| 19 | attorneys' fees. | | | |
| 20 | <u>COUNT IX</u> | | | |
| 21 | Violation of California Consumers Legal Remedies Act, Cal Bus. & Prof. Code §§ 1750, et seq. | | | |
| 22 | (On Behalf of the California Class) | | | |
| 23 | 155. Plaintiffs incorporate by reference all allegations in this Complaint as though fully | | | |
| 24 | set forth herein. | | | |
| 25 | 156. Plaintiffs Monica and Bruce Holcomb bring this Count on behalf of themselves | | | |
| 26 | and the California Class. | | | |
| 27 | 157. Plaintiffs and the other members of the California Class were deceived by Audi's | | | |
| 28 | failure to disclose that the Defective Vehicles share a uniform defect in that they are equipped | | | |
| | - 27 - CLASS ACTION COMPLAINT CASE NO. 3:16-cv-6648 | | | |

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with "defeat devices." These defeat devices are designed to secretly limit emissions and increase
 fuel efficiency when the vehicles are being subject to regulatory emissions and fuel efficiency
 testing. However, when the Defective Vehicles are in regular use on the road, they emit a
 substantially increased amount of noxious gasses.

- 5 158. Audi engaged in unfair or deceptive acts or practices when, in the course of its
 6 business it, among other acts and practices, knowingly made materially incomplete
 7 representations as to the characteristics, uses and benefits of the Defective Vehicles.
- 8 159. In the various channels of information through which Audi sold Defective 9 Vehicles, Audi failed to disclose material information concerning the Defective Vehicles, which 10 it had a duty to disclose. Audi had a duty to disclose the defect because, as detailed above, (a) 11 Audi knew about the defeat device equipped on the Defective Vehicles; (b) Audi had exclusive 12 knowledge of material facts not known to the general public, Plaintiffs, or the other California 13 Class members; and (c) Audi actively concealed material facts concerning the defeat device from 14 the general public, Plaintiffs, and the California Class members. As detailed above, Audi knew 15 the information concerning the defect at the time of advertising and selling the Defective 16 Vehicles, all of which was intended to induce consumers to purchase the Defective Vehicles.
- 17 160. Audi intended for the Plaintiffs and the other California Class members to rely on
 18 it to provide adequately designed, and adequately manufactured automobiles and to honestly and
 19 accurately reveal the problems described throughout this Complaint.
- 20

161. Audi intentionally failed or refused to disclose the defect to consumers.

21 162. Audi's conduct and deceptive omissions were intended to induce Plaintiffs and the
22 other California Class members to believe that the Defective Vehicles were adequately designed
23 and adequately manufactured automobiles.

24 25 163. Audi's conduct constitutes unfair acts or practices as defined by the CaliforniaConsumers Legal Remedies Act (the "CLRA").

164. Plaintiffs and the other California Class members have suffered injury in fact and
actual damages resulting from Audi's material omissions because they paid inflated purchase
prices for the Defective Vehicles.

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| 1 | 165. | Plaintiffs and the California Class seek an order er | ijoining Audi's unfair or |
|----|--|--|---|
| 2 | deceptive acts or practices, equitable relief, an award of attorneys' fees and costs under Cal. Civ. | | |
| 3 | Code § 1780(e), and any other just and proper relief available under the CLRA. | | |
| 4 | 166. In accordance with section 1782(a) of the CLRA, Plaintiffs' counsel, on behalf of | | |
| 5 | Plaintiffs, will | serve Audi with notice of their alleged violations of | of Cal. Civ. Code § 1770(a) |
| 6 | relating to the | Defective Vehicles purchased by Plaintiffs and Cal | lifornia Class members, and |
| 7 | demand that Audi corrects or agrees to correct the actions described therein within thirty (30) | | |
| 8 | days of such r | otice. If Audi fails to do so, Plaintiffs will amend t | his Complaint as of right (or |
| 9 | otherwise seel | c leave to amend the Complaint) to include compen | satory and monetary damages to |
| 10 | which Plaintif | fs and Class members are entitled. | |
| 11 | 167. | Audi's conduct described herein is fraudulent, war | nton, and malicious. |
| 12 | | <u>COUNT X</u> | |
| 13 | | Violation of Connecticut Unlawful Trade H Conn. Gen. Stat. § 42-110a, et se | <i>q</i> . |
| 14 | | (On Behalf of the Connecticut Cla | ISS) |
| 15 | 168. | Plaintiffs incorporate by reference all allegations in | n this Complaint as though fully |
| 16 | set forth herei | n. | |
| 17 | 169. Plaintiffs Brian Perelmuter (for the purpose of this Count, "Plaintiff") brings this | | Count, "Plaintiff") brings this |
| 18 | Count on behalf of himself and the Connecticut Class. | | |
| 19 | 170. | 170. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA") provides: "No | |
| 20 | person shall e | ngage in unfair methods of competition and unfair of | or deceptive acts or practices in |
| 21 | the conduct of | any trade or commerce." Conn. Gen. Stat. § 42-11 | .0b(a). |
| 22 | 171. | Audi is a "person" within the meaning of Conn. G | en. Stat. § 42-110a(3). |
| 23 | 172. | Audi engaged in "trade" or "commerce" within the | e meaning of Conn. Gen. Stat. |
| 24 | § 42-110a(4). | | |
| 25 | 173. | Audi participated in deceptive trade practices that | violated the Connecticut UTPA |
| 26 | as described h | erein. | |
| 27 | 174. | In the course of its business, Audi concealed and s | uppressed material facts |
| 28 | concerning the | e Defective Vehicles. Audi accomplished this by in | stalling an illegal defeat device |
| | 1313923.4 | - 29 - | CLASS ACTION COMPLAINT CASE NO. 3:16-cv-6648 |

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| 1 | the Defective Vehicles that caused the vehicles to operate in a low emission test mode only | | |
|----|---|--|--|
| 2 | during emissions testing. During normal operations, the Defective Vehicles would emit grossly | | |
| 3 | larger quantities of noxious CO ₂ gasses. The result was what Audi intended—the Defective | | |
| 4 | Vehicles passed emissions testing by way of deliberately induced false readings. | | |
| 5 | 175. Plaintiff and Connecticut Class members had no way of discerning that Audi's | | |
| 6 | representations were false and misleading because Audi's defeat device software was extremely | | |
| 7 | sophisticated technology. Plaintiff and Connecticut Class members did not and could not unravel | | |
| 8 | Audi's deception on their own. | | |
| 9 | 176. Audi thus violated the Connecticut UTPA by, at minimum: employing deception, | | |
| 10 | deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of | | |
| 11 | any material fact with intent that others rely upon such concealment, suppression or omission, in | | |
| 12 | connection with the sale of Defective Vehicles. | | |
| 13 | 177. Audi intentionally and knowingly misrepresented material facts regarding the | | |
| 14 | Defective Vehicles with intent to mislead Plaintiff and the Connecticut Class. | | |
| 15 | 178. Audi knew or should have known that its conduct violated the Connecticut UTPA. | | |
| 16 | 179. Audi owed Plaintiff and the Connecticut Class a duty to disclose the illegality, | | |
| 17 | public health and safety risks, the true nature of the Defective Vehicles, because Audi: | | |
| 18 | a. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with | | |
| 19 | regulations; | | |
| 20 | b. intentionally concealed the foregoing from regulators, Plaintiff, and/or Class members; and/or | | |
| 21 | c. made incomplete representations about the Defective Vehicles generally, | | |
| 22 | and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these | | |
| 23 | representations. | | |
| 24 | 180. Audi fraudulent use of the "defeat device" and its concealment of the true | | |
| 25 | characteristics of the Defective Vehicles' fuel consumption and CO ₂ emissions were material to | | |
| 26 | Plaintiff and the Connecticut Class. | | |
| 27 | 181. Audi's unfair or deceptive acts or practices were likely to and did in fact deceive | | |
| 28 | regulators and reasonable consumers, including Plaintiff. | | |
| | - 30 - CLASS ACTION COMPLAINT | | |

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| 1 | 182. Plaintiff and the Connecticut Class suffered ascertainable loss and actual damages | | |
|----|---|--|--|
| 2 | as a direct and proximate result of Audi's misrepresentations and its concealment of and failure | | |
| 3 | disclose material information. Plaintiff and the Connecticut Class members who purchased or | | |
| 4 | leased the Defective Vehicles would not have purchased or leased them at all and/or-if the | | |
| 5 | Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell- | | |
| 6 | would have paid significantly less for them. Plaintiff and the Connecticut Class also suffered | | |
| 7 | diminished value of their vehicles, as well as lost or diminished use. | | |
| 8 | 183. Plaintiff and the Connecticut Class seek monetary relief against Audi in an amount | | |
| 9 | to be determined at trial. Plaintiff and the Connecticut Class also seek punitive damages because | | |
| 10 | Audi engaged in aggravated and outrageous conduct with an evil mind. | | |
| 11 | 184. Plaintiff also seek an order enjoining Audi's unfair, unlawful, and/or deceptive | | |
| 12 | practices, attorneys' fees, and any other just and proper relief available under the Connecticut | | |
| 13 | CFA. | | |
| 14 | 185. Audi had an ongoing duty to all Audi customers to refrain from unfair and | | |
| 15 | deceptive practices under the Connecticut UTPA. All owners of Defective Vehicles suffered | | |
| 16 | ascertainable loss in the form of the diminished value of their vehicles as a result of Audi's | | |
| 17 | deceptive and unfair acts and practices made in the course of Audi's business. | | |
| 18 | 186. Audi's violations present a continuing risk to Plaintiff as well as to the general | | |
| 19 | public. Audi's unlawful acts and practices complained of herein affect the public interest. | | |
| 20 | 187. As a direct and proximate result of Audi's violations of the Connecticut UTPA, | | |
| 21 | Plaintiffs and the Connecticut Class have suffered injury-in-fact and/or actual damage. | | |
| 22 | 188. Plaintiffs and Class members are entitled to recover their actual damages, punitive | | |
| 23 | damages, and attorneys' fees pursuant to Conn. Gen. Stat. § 42-110g. | | |
| 24 | 189. Defendants acted with a reckless indifference to another's rights or wanton or | | |
| 25 | intentional violation to another's rights and otherwise engaged in conduct amounting to a | | |
| 26 | particularly aggravated, deliberate disregard of the rights and safety of others. | | |
| 27 | | | |
| 28 | | | |
| | - 31 - CLASS ACTION COMPLAINT | | |

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|-------------|---|
| 1 2 3 | <u>COUNT XI</u> Violation of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, <i>et seq</i> . (On Behalf of the New Jersey Class) |
| 4 | 190. Plaintiffs incorporate by reference all allegations in this Complaint as though fully |
| 5 | set forth herein. |
| 6 | 191. Plaintiff Capizzi (for the purpose of this Count, "Plaintiff") brings this Count on |
| 7 | behalf of himself and the New Jersey Class. |
| 8 | 192. Plaintiff, the New Jersey Class members, and Audi are "persons" under the New |
| 9 | Jersey Consumer Fraud Act ("New Jersey CFA"), N.J. Stat. § 56:8-1(d). |
| 10 | 193. Audi engaged in "sales" of "merchandise" within the meaning of N.J. Stat. §56:8- |
| 11 | 1(c), (e). Audi's actions as set forth herein occurred in the conduct of trade or commerce. |
| 12 | 194. The New Jersey CFA makes unlawful "[t]he act, use or employment by any person |
| 13 | of any unconscionable commercial practice, deception, fraud, false pretense, false promise, |
| 14 | misrepresentation, or the knowing concealment, suppression, or omission of any material fact |
| 15 | with the intent that others rely upon such concealment, suppression or omission, in connection |
| 16 | with the sale or advertisement of any merchandise or real estate, or with the subsequent |
| 17 | performance of such person as aforesaid, whether or not any person has in fact been misled, |
| 18 | deceived or damaged thereby." N.J. Stat. § 56:8-2. |
| 19 | 195. In the course of its business, Audi concealed and suppressed material facts |
| 20 | concerning the Defective Vehicles. Audi accomplished this by installing an illegal defeat device |
| 21 | the Defective Vehicles that caused the vehicles to operate in a low emission test mode only |
| 22 | during emissions testing. During normal operations, the Defective Vehicles would emit grossly |
| 23 | larger quantities of noxious CO ₂ gasses. The result was what Audi intended—the Defective |
| 24 | Vehicles passed emissions testing by way of deliberately induced false readings. |
| 25 | 196. Plaintiff and New Jersey Class members had no way of discerning that Audi's |
| 26 | representations were false and misleading because Audi's defeat device software was extremely |
| 27 | sophisticated technology. Plaintiff and New Jersey Class members did not and could not unravel |
| 28 | Audi's deception on their own. |
| | 22 |

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| 1 | 197. Audi thus violated the New Jersey CFA by, at minimum: employing deception, | |
|----------|--|--|
| 2 | deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of | |
| 3 | any material fact with intent that others rely upon such concealment, suppression or omission, in | |
| 4 | connection with the sale of Defective Vehicles. | |
| 5 | 198. Audi intentionally and knowingly misrepresented material facts regarding the | |
| 6 | Defective Vehicles with intent to mislead Plaintiff and the New Jersey Class. | |
| 7 | 199. Audi knew or should have known that its conduct violated the New Jersey CFA. | |
| 8 | 200. Audi owed Plaintiff and the New Jersey Class a duty to disclose the illegality, | |
| 9 | public health and safety risks, the true nature of the Defective Vehicles, because Audi: | |
| 10 11 | a. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with regulations; | |
| 12 | b. intentionally concealed the foregoing from regulators, Plaintiff, and/or Class members; and/or | |
| 13 | c. made incomplete representations about the Defective Vehicles generally, | |
| 14 15 | and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations. | |
| 16 | 201. Audi fraudulent use of the "defeat device" and its concealment of the true | |
| 17 | characteristics of the Defective Vehicles' fuel consumption and CO ₂ emissions were material to | |
| 18 | Plaintiff and the New Jersey Class. | |
| 19 | 202. Audi's unfair or deceptive acts or practices were likely to and did in fact deceive | |
| 20 | regulators and reasonable consumers, including Plaintiff. | |
| 21 | 203. Plaintiff and the New Jersey Class suffered ascertainable loss and actual damages | |
| 22 | as a direct and proximate result of Audi's misrepresentations and its concealment of and failure to | |
| 23 | disclose material information. Plaintiff and the New Jersey Class members who purchased or | |
| 24 | leased the Defective Vehicles would not have purchased or leased them at all and/or-if the | |
| 25 | Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell- | |
| 26 | would have paid significantly less for them. Plaintiff and the New Jersey Class also suffered | |
| 27 | diminished value of their vehicles, as well as lost or diminished use. | |
| 28 | | |

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| 1 | 204. Plaintiff and the New Jersey Class seek monetary relief against Audi in an amount | | | |
|----|---|--|--|--|
| 2 | to be determined at trial. Plaintiff and the New Jersey Class also seek punitive damages because | | | |
| 3 | Audi engaged in aggravated and outrageous conduct with an evil mind. | | | |
| 4 | 205. Plaintiff also seek an order enjoining Audi's unfair, unlawful, and/or deceptive | | | |
| 5 | practices, attorneys' fees, and any other just and proper relief available under the New Jersey | | | |
| 6 | CFA. | | | |
| 7 | 206. Audi had an ongoing duty to all Audi customers to refrain from unfair and | | | |
| 8 | deceptive practices under the New Jersey CFA. All owners of Defective Vehicles suffered | | | |
| 9 | ascertainable loss in the form of the diminished value of their vehicles as a result of Audi's | | | |
| 10 | deceptive and unfair acts and practices made in the course of Audi's business. | | | |
| 11 | 207. Audi's violations present a continuing risk to Plaintiff as well as to the general | | | |
| 12 | public. Audi's unlawful acts and practices complained of herein affect the public interest. | | | |
| 13 | 208. As a direct and proximate result of Audi's violations of the New Jersey CFA, | | | |
| 14 | Plaintiffs and the New Jersey Class have suffered injury-in-fact and/or actual damage in an | | | |
| 15 | amount to be proven at trial, and seek all just and proper remedies, including, but not limited to, | | | |
| 16 | actual and statutory damages, treble damages, an order enjoining Defendants' deceptive and | | | |
| 17 | unfair conduct, costs and reasonable attorneys' fees under N.J. Stat. § 56:8-19, and all other just | | | |
| 18 | and appropriate relief. | | | |
| 19 | <u>COUNT XII</u> Violation of the New Mexico Unfair Trade Prostices Act | | | |
| 20 | Violation of the New Mexico Unfair Trade Practices Act, N.M. Stat. Ann. §§ 57-12-1, <i>et seq</i> . (On Behalf of the New Mexico Class) | | | |
| 21 | (On Denan of the reew Wexteo Chass) | | | |
| 22 | 209. Plaintiffs incorporate by reference all allegations in this Complaint as though fully | | | |
| 23 | set forth herein. | | | |
| 24 | 210. Plaintiff Geert Wenes (for the purpose of this Count, "Plaintiff") brings this Count | | | |
| 25 | on behalf of himself and the New Mexico Class. | | | |
| 26 | 211. Audi, Plaintiff and New Mexico Class members are or were "person[s]" under the | | | |
| 27 | New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. Stat. Ann. § 57-12-2. | | | |
| 28 | | | | |
| | 34 CLASS ACTION COMPLAINT | | | |

1 212. Audi's actions as set forth herein occurred in the conduct of trade or commerce as 2 defined under N.M. Stat. Ann. § 57-12-2.

3 213. The New Mexico UTPA makes unlawful "a false or misleading oral or written 4 statement, visual description or other representation of any kind knowingly made in connection 5 with the sale, lease, rental or loan of goods or services . . . by a person in the regular course of the 6 person's trade or commerce, that may, tends to or does deceive or mislead any person," including 7 but not limited to "failing to state a material fact if doing so deceives or tends to deceive." N.M. 8 Stat. Ann. § 57-12-2(D). Audi's acts and omissions described herein constitute unfair or 9 deceptive acts or practices under N.M. Stat. Ann. § 57-12-2(D). In addition, Audi's actions 10 constitute unconscionable actions under N.M. Stat. Ann. § 57-12-2(E), since they took advantage 11 of the lack of knowledge, ability, experience, and capacity of the New Mexico Class members to 12 a grossly unfair degree.

13 214. In the course of its business, Audi concealed and suppressed material facts 14 concerning the Defective Vehicles. Audi accomplished this by installing an illegal defeat device 15 the Defective Vehicles that caused the vehicles to operate in a low emission test mode only 16 during emissions testing. During normal operations, the Defective Vehicles would emit grossly 17 larger quantities of noxious CO₂ gasses. The result was what Audi intended—the Defective 18 Vehicles passed emissions testing by way of deliberately induced false readings.

19 215. Plaintiff and New Mexico Class members had no way of discerning that Audi's 20 representations were false and misleading because Audi's defeat device software was extremely 21 sophisticated technology. Plaintiff and New Mexico Class members did not and could not 22 unravel Audi's deception on their own.

23

216. Audi thus violated the New Mexico UTPA by, at minimum: employing deception, 24 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of 25 any material fact with intent that others rely upon such concealment, suppression or omission, in 26 connection with the sale of Defective Vehicles.

27 217. Audi intentionally and knowingly misrepresented material facts regarding the 28 Defective Vehicles with intent to mislead Plaintiff and the New Mexico Class.

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|--------------|--|--|--|
| 1 | 218. Audi knew or should have known that its conduct violated the New Mexico | | |
| 2 | UTPA. | | |
| 3 | 219. Audi owed Plaintiff and the New Mexico Class a duty to disclose the illegality, | | |
| 4 | public health and safety risks, the true nature of the Defective Vehicles, because Audi: | | |
| 5 6 | a. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with regulations; | | |
| 7 | b. intentionally concealed the foregoing from regulators, Plaintiff, and/or Class members; and/or | | |
| 8 9 10 | c. made incomplete representations about the Defective Vehicles generally, and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations. | | |
| 11 | 220. Audi fraudulent use of the "defeat device" and its concealment of the true | | |
| 12 | characteristics of the Defective Vehicles' fuel consumption and CO ₂ emissions were material to | | |
| 13 | Plaintiff and the New Mexico Class. | | |
| 14 | 221. Audi's unfair or deceptive acts or practices were likely to and did in fact deceive | | |
| 15 | regulators and reasonable consumers, including Plaintiff. | | |
| 16 | 222. Plaintiff and the New Mexico Class suffered ascertainable loss and actual damages | | |
| 17 | as a direct and proximate result of Audi's misrepresentations and its concealment of and failure to | | |
| 18 | disclose material information. Plaintiff and the New Mexico Class members who purchased or | | |
| 19 | leased the Defective Vehicles would not have purchased or leased them at all and/or-if the | | |
| 20 | Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell- | | |
| 21 | would have paid significantly less for them. Plaintiff and the New Mexico Class also suffered | | |
| 22 | diminished value of their vehicles, as well as lost or diminished use. | | |
| 23 | 223. Plaintiff and the New Mexico Class seek monetary relief against Audi in an | | |
| 24 | amount to be determined at trial. Plaintiff and the New Mexico Class also seek punitive damages | | |
| 25 | because Audi engaged in aggravated and outrageous conduct with an evil mind. | | |
| 26 | 224. Plaintiff also seek an order enjoining Audi's unfair, unlawful, and/or deceptive | | |
| 27 | practices, attorneys' fees, and any other just and proper relief available under the New Mexico | | |
| 28 | UTPA. | | |
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| 1 | 225. Audi had an ongoing duty to all Audi customers to refrain from unfair and | | |
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| | | | |
| 2 | deceptive practices under the New Mexico UTPA. All owners of Defective Vehicles suffered | | |
| 3 | ascertainable loss in the form of the diminished value of their vehicles as a result of Audi's | | |
| 4 | deceptive and unfair acts and practices made in the course of Audi's business. | | |
| 5 | 226. Audi's violations present a continuing risk to Plaintiff as well as to the general | | |
| 6 | public. Audi's unlawful acts and practices complained of herein affect the public interest. | | |
| 7 | 227. As a direct and proximate result of Defendants' violations of the New Mexico | | |
| 8 | UTPA, Plaintiff and the New Mexico Class have suffered injury-in-fact and/or actual damage. | | |
| 9 | 228. Because Audi's unconscionable, willful conduct caused actual harm to New | | |
| 10 | Mexico Class members, the New Mexico Class seeks recovery of actual damages or \$100, | | |
| 11 | whichever is greater, discretionary treble damages, punitive damages, and reasonable attorneys' | | |
| 12 | fees and costs, as well as all other proper and just relief available under N.M. Stat. Ann. § 57-12- | | |
| 13 | 10. | | |
| 14 | 229. New Mexico Class members also seek punitive damages against Audi because | | |
| 15 | Audi's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith. | | |
| 16 | COUNT XIII | | |
| 10 | | | |
| 17 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, | | |
| | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, <i>et seq</i> . (On Behalf of the Pennsylvania Class) | | |
| 17 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, <i>et seq</i> . | | |
| 17 18 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, <i>et seq</i> . (On Behalf of the Pennsylvania Class) | | |
| 17 18 19 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (On Behalf of the Pennsylvania Class) 230. Plaintiffs incorporate by reference all allegations in this Complaint as though fully | | |
| 17 18 19 20 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, <i>et seq</i> . (On Behalf of the Pennsylvania Class) 230. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein. | | |
| 17 18 19 20 21 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (On Behalf of the Pennsylvania Class) 230. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein. 231. Plaintiffs Ralph May and Curtis Hurst (for the purpose of this Count, "Plaintiffs") | | |
| 17 18 19 20 21 22 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (On Behalf of the Pennsylvania Class) 230. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein. 231. Plaintiffs Ralph May and Curtis Hurst (for the purpose of this Count, "Plaintiffs") bring this Count on behalf of themselves and the Pennsylvania Class. | | |
| 17 18 19 20 21 22 23 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (On Behalf of the Pennsylvania Class) 230. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein. 231. Plaintiffs Ralph May and Curtis Hurst (for the purpose of this Count, "Plaintiffs") bring this Count on behalf of themselves and the Pennsylvania Class. 232. Audi, Plaintiffs and the Pennsylvania Class are "persons" within the meaning of 73 | | |
| 17 18 19 20 21 22 23 24 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (On Behalf of the Pennsylvania Class) 230. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein. 231. Plaintiffs Ralph May and Curtis Hurst (for the purpose of this Count, "Plaintiffs") bring this Count on behalf of themselves and the Pennsylvania Class. 232. Audi, Plaintiffs and the Pennsylvania Class are "persons" within the meaning of 73 P.S. § 201-2(2). | | |
| 17 18 19 20 21 22 23 24 25 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (On Behalf of the Pennsylvania Class) 230. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein. 231. Plaintiffs Ralph May and Curtis Hurst (for the purpose of this Count, "Plaintiffs") bring this Count on behalf of themselves and the Pennsylvania Class. 232. Audi, Plaintiffs and the Pennsylvania Class are "persons" within the meaning of 73 P.S. § 201-2(2). 233. Audi is engaged in "trade" or "commerce" within the meaning of 73 P.S. § 201- | | |
| 17 18 19 20 21 22 23 24 25 26 | Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq. (On Behalf of the Pennsylvania Class) 230. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein. 231. Plaintiffs Ralph May and Curtis Hurst (for the purpose of this Count, "Plaintiffs") bring this Count on behalf of themselves and the Pennsylvania Class. 232. Audi, Plaintiffs and the Pennsylvania Class are "persons" within the meaning of 73 P.S. § 201-2(2). 233. Audi is engaged in "trade" or "commerce" within the meaning of 73 P.S. § 201-2(3). | | |

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| 1 | 235. In the course of its business, Audi concealed and suppressed material facts | | | | |
|----|---|--|--|--|--|
| 2 | concerning the Defective Vehicles. Audi accomplished this by installing an illegal defeat device | | | | |
| 3 | the Defective Vehicles that caused the vehicles to operate in a low emission test mode only | | | | |
| 4 | during emissions testing. During normal operations, the Defective Vehicles would emit grossly | | | | |
| 5 | larger quantities of noxious CO ₂ gasses. The result was what Audi intended—the Defective | | | | |
| 6 | Vehicles passed emissions testing by way of deliberately induced false readings. | | | | |
| 7 | 236. Plaintiffs and Pennsylvania Class members had no way of discerning that Audi's | | | | |
| 8 | representations were false and misleading because Audi's defeat device software was extremely | | | | |
| 9 | sophisticated technology. Plaintiffs and Pennsylvania Class members did not and could not | | | | |
| 10 | unravel Audi's deception on their own. | | | | |
| 11 | 237. Audi thus violated the Pennsylvania UTPA by, at minimum: employing deception, | | | | |
| 12 | deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of | | | | |
| 13 | any material fact with intent that others rely upon such concealment, suppression or omission, in | | | | |
| 14 | connection with the sale of Defective Vehicles. | | | | |
| 15 | 238. Audi intentionally and knowingly misrepresented material facts regarding the | | | | |
| 16 | Defective Vehicles with intent to mislead Plaintiffs and the Pennsylvania Class. | | | | |
| 17 | 239. Audi knew or should have known that its conduct violated the Pennsylvania | | | | |
| 18 | UTPA. | | | | |
| 19 | 240. Audi owed Plaintiffs and the Pennsylvania Class a duty to disclose the illegality, | | | | |
| 20 | public health and safety risks, the true nature of the Defective Vehicles, because Audi: | | | | |
| 21 | a. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with | | | | |
| 22 | regulations; | | | | |
| 23 | b. intentionally concealed the foregoing from regulators, Plaintiffs, and/or Class members; and/or | | | | |
| 24 | c. made incomplete representations about the Defective Vehicles generally, | | | | |
| 25 | and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these | | | | |
| 26 | representations. | | | | |
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- Audi fraudulent use of the "defeat device" and its concealment of the true
 characteristics of the Defective Vehicles' fuel consumption and CO₂ emissions were material to
 Plaintiffs and the Pennsylvania Class.
- 4 242. Audi's unfair or deceptive acts or practices were likely to and did in fact deceive
 5 regulators and reasonable consumers, including Plaintiffs.
- 6 243. Plaintiffs and the Pennsylvania Class suffered ascertainable loss and actual
 7 damages as a direct and proximate result of Audi's misrepresentations and its concealment of and
 8 failure to disclose material information. Plaintiffs and the Pennsylvania Class members who
 9 purchased or leased the Defective Vehicles would not have purchased or leased them at all
 10 and/or—if the Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered
 11 legal to sell—would have paid significantly less for them. Plaintiffs and the Pennsylvania Class
 12 also suffered diminished value of their vehicles, as well as lost or diminished use.
- 13 244. Plaintiffs and the Pennsylvania Class seek monetary relief against Audi in an
 14 amount to be determined at trial. Plaintiffs and the Pennsylvania Class also seek punitive
 15 damages because Audi engaged in aggravated and outrageous conduct with an evil mind.
- 16 245. Plaintiffs also seek an order enjoining Audi's unfair, unlawful, and/or deceptive
 17 practices, attorneys' fees, and any other just and proper relief available under the Pennsylvania
 18 UTPA.
- Audi had an ongoing duty to all Audi customers to refrain from unfair and
 deceptive practices under the Pennsylvania UTPA. All owners of Defective Vehicles suffered
 ascertainable loss in the form of the diminished value of their vehicles as a result of Audi's
 deceptive and unfair acts and practices made in the course of Audi's business.
- 23 24

247. Audi's violations present a continuing risk to Plaintiffs as well as to the general public. Audi's unlawful acts and practices complained of herein affect the public interest.

25 248. As a direct and proximate result of Defendants' violations of the Pennsylvania
26 UTPA, Plaintiffs and the Pennsylvania Class have suffered injury-in-fact and/or actual damage.

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| 1 | 249. Pursuant to 73 P.S. § 201-9.2(a), Plaintiffs and the Pennsylvania Class seek an | | | |
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| 2 | order enjoining Audi's unfair and/or deceptive acts or practices, damages, punitive damages, and | | | |
| 3 | attorneys' fees, costs, and any other just and proper relief available under the Pennsylvania UTPA. | | | |
| 4 | COUNT XIV | | | |
| 5 | Violation of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18, et seq. | | | |
| 6 | (On Behalf of the Wisconsin Class)\ | | | |
| 7 | 250. Plaintiffs incorporate by reference all allegations in this Complaint as though fully | | | |
| 8 | set forth herein. | | | |
| 9 | 251. Plaintiff Ted Schrubbe (for the purpose of this Count, "Plaintiff") brings this | | | |
| 10 | Count on behalf of himself and the Wisconsin Class. | | | |
| 11 | 252. Plaintiff and the Wisconsin Class members are "persons" and members of "the | | | |
| 12 | public" under the Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA"), Wis. Stat. § | | | |
| 13 | 100.18(1). Plaintiff and Wisconsin Class members purchased or leased one or more Defective | | | |
| 14 | Vehicles. | | | |
| 15 | 253. Audi is a "person, firm, corporation or association" within the meaning of Wis. | | | |
| 16 | Stat. § 100.18(1). | | | |
| 17 | 254. The Wisconsin DTPA makes unlawful any "representation or statement of fact | | | |
| 18 | which is untrue, deceptive or misleading." Wis. Stat. § 100.18(1). | | | |
| 19 | 255. In the course of its business, Audi concealed and suppressed material facts | | | |
| 20 | concerning the Defective Vehicles. Audi accomplished this by installing an illegal defeat device | | | |
| 21 | the Defective Vehicles that caused the vehicles to operate in a low emission test mode only | | | |
| 22 | during emissions testing. During normal operations, the Defective Vehicles would emit grossly | | | |
| 23 | larger quantities of noxious CO ₂ gasses. The result was what Audi intended—the Defective | | | |
| 24 | Vehicles passed emissions testing by way of deliberately induced false readings. | | | |
| 25 | 256. Plaintiff and Wisconsin Class members had no way of discerning that Audi's | | | |
| 26 | representations were false and misleading because Audi's defeat device software was extremely | | | |
| 27 | sophisticated technology. Plaintiff and Wisconsin Class members did not and could not unravel | | | |
| 28 | Audi's deception on their own. | | | |
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| 1 | 257. Audi thus violated the Wisconsin DTPA by, at minimum: employing deception, | | | |
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| 2 | deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of | | | |
| 3 | any material fact with intent that others rely upon such concealment, suppression or omission, in | | | |
| 4 | connection with the sale of Defective Vehicles. | | | |
| 5 | 258. Audi intentionally and knowingly misrepresented material facts regarding the | | | |
| 6 | Defective Vehicles with intent to mislead Plaintiff and the Wisconsin Class. | | | |
| 7 | 259. Audi knew or should have known that its conduct violated the Wisconsin DTPA. | | | |
| 8 | 260. Audi owed Plaintiff and the Wisconsin Class a duty to disclose the illegality, | | | |
| 9 | public health and safety risks, the true nature of the Defective Vehicles, because Audi: | | | |
| 10 11 | a. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not comply with regulations; | | | |
| 12 | b. intentionally concealed the foregoing from regulators, Plaintiff, and/or Class members; and/or | | | |
| 13 14 | c. made incomplete representations about the Defective Vehicles generally, and the use of the defeat device in particular, while purposefully withholding material facts from Plaintiffs that contradicted these | | | |
| 15 | representations. | | | |
| 16 | 261. Audi fraudulent use of the "defeat device" and its concealment of the true | | | |
| 17 | characteristics of the Defective Vehicles' fuel consumption and CO ₂ emissions were material to | | | |
| 18 | Plaintiff and the Wisconsin Class. | | | |
| 19 | 262. Audi's unfair or deceptive acts or practices were likely to and did in fact deceive | | | |
| 20 | regulators and reasonable consumers, including Plaintiff. | | | |
| 21 | 263. Plaintiff and the Wisconsin Class suffered ascertainable loss and actual damages as | | | |
| 22 | a direct and proximate result of Audi's misrepresentations and its concealment of and failure to | | | |
| 23 | disclose material information. Plaintiff and the Wisconsin Class members who purchased or | | | |
| 24 | leased the Defective Vehicles would not have purchased or leased them at all and/or-if the | | | |
| 25 | Vehicles' true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell- | | | |
| 26 | would have paid significantly less for them. Plaintiff and the Wisconsin Class also suffered | | | |
| 27 | diminished value of their vehicles, as well as lost or diminished use. | | | |
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| 1 | 264. Plaintiff and the Wisconsin Class seek monetary relief against Audi in an amount | | | |
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| 2 | to be determined at trial. Plaintiff and the Wisconsin Class also seek punitive damages because | | | |
| 3 | Audi engaged in aggravated and outrageous conduct with an evil mind. | | | |
| 4 | 265. Plaintiff also seeks an order enjoining Audi's unfair, unlawful, and/or deceptive | | | |
| 5 | practices, attorneys' fees, and any other just and proper relief available under the Wisconsin | | | |
| 6 | DTPA. | | | |
| 7 | 266. Audi had an ongoing duty to all Audi customers to refrain from unfair and | | | |
| 8 | deceptive practices under the Wisconsin DTPA. All owners of Defective Vehicles suffered | | | |
| 9 | ascertainable loss in the form of the diminished value of their vehicles as a result of Audi's | | | |
| 10 | deceptive and unfair acts and practices made in the course of Audi's business. | | | |
| 11 | 267. Audi's violations present a continuing risk to Plaintiff as well as to the general | | | |
| 12 | public. Audi's unlawful acts and practices complained of herein affect the public interest. | | | |
| 13 | 268. As a direct and proximate result of Audi's violations of the Wisconsin DTPA, | | | |
| 14 | Plaintiff and the Wisconsin Class have suffered injury-in-fact and/or actual damage. | | | |
| 15 | 269. Plaintiff and the Wisconsin Class seek damages, court costs and attorneys' fees | | | |
| 16 | under Wis. Stat. § 100.18(11)(b)(2), and any other just and proper relief available under the | | | |
| 17 | Wisconsin DTPA. | | | |
| 18 | PRAYER FOR RELIEF | | | |
| 19 | WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action | | | |
| 20 | pursuant to one or more of the proposed Classes, as they may be modified or amended, and | | | |
| 21 | respectfully requests this Court: | | | |
| 22 | A. Determine that the claims alleged herein may be maintained as a class action under | | | |
| 23 | Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more | | | |
| 24 | Classes as defined above; | | | |
| 25 | B. Appoint Plaintiffs as the representatives of the Classes and their counsel as Class | | | |
| 26 | counsel; | | | |
| 27 | C. Award damages, including compensatory and exemplary damages, to Plaintiffs | | | |
| 28 | and all other Class members; | | | |
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| | | | | |
| 1 | D. | Award Plaintiffs and Class members actual damages sustained; | | |
| 2 | E. | E. Award Plaintiffs and Class members such additional damages, over and above the | | |
| 3 | amount of th | neir actual damages, that are authorized and warranted by law, applicable; | | |
| 4 | F. Grant restitution to Plaintiffs and Class members and require Defendants to | | | |
| 5 | disgorge inequitable gains; | | | |
| 6 | G. Grant appropriate injunctive and/or declaratory relief, including, without | | | |
| 7 | limitation, a | n order that requires Defendants to repair, recall, and/or replace the Defective | ; | |
| 8 | Vehicles and to extend the applicable warranties to a reasonable period of time, or, at a minimum, | | | |
| 9 | to provide Plaintiffs and Class members with appropriate curative notice regarding the existence | | | |
| 10 | and cause of | f the defect; | | |
| 11 | H. | Award Plaintiffs and Class members punitive damages; | | |
| 12 | I. | Award Plaintiffs and Class members their reasonable attorneys' fees and | | |
| 13 | reimburseme | ent of all costs for the prosecution of this action; and | | |
| 14 | J. Award such other relief as this Court deems just and appropriate. | | | |
| 15 | | JURY DEMAND | | |
| 16 | Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a trial by jury | | | |
| 17 | on all issues | so triable. Respectfully submitted, | | |
| 18 | Dated: Nov | ember 16, 2016 | | |
| 19 | | By: <u>/s/ Elizabeth J. Cabraser</u> By: Elizabeth J. Cabraser | _ | |
| 20 | | Elizabeth J. Cabraser (SBN 083151) | | |
| 21 | | Kevin R. Budner (SBN 287271) Phong-Chau G. Nguyen (SBN 286789) | | |
| 22 | Wilson M. Dunlavey (SBN 307719) LIEFF CABRASER HEIMANN & BERNSTEIN, LLP | | | |
| 23 | 275 Battery Street, 29th Floor San Francisco, CA 94111-3339 | | | |
| 24 | | Telephone: 415.956.1000 Facsimile: 415.956.1008 | | |
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| | | | | |
| 1 | | David S. Stellings (to b | be admitted Pro Hac Vice) | |
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| 3 | | New York, NY 10013- Telephone: 212.355.95 | | |
| 4 | | Facsimile: 212.355.959 dstellings@lchb.com | 92 | |
| 5 | | Roland Tellis (SBN 18 | | |
| 6 | | Mark Pifko (SBN 2284 David Fernandes (SBN | 1 280944) | |
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| 22 | | Facsimile: 843.216.94 jrice@motleyrice.com | 50 | |
| 23 | | David Boies (to be adn | nitted Pro Hac Vice) | |
| 24 | | BOIES, SCHILLER & 333 Main Street | FLEXNER LLP | |
| 25 | | Armonk, NY 10504 Telephone: 914.749.82 | 200 | |
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|------------------|--------------------|--|---|
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| 5 | | pgeller@rgrdlaw.com | |
| 6 | Counsel for Plain | tiffs, individually and on behalf of a | l others similarly situated |
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