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19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

21 MONICA HOLCOMB, BRUCE HOLCOMB,  
22 TED SCHRUBBE, GEERT WENES, BRIAN  
PERELMUTER, JASON CAPIZZI, RALPH  
23 MAY, WILLIAM BARROIS, CURTIS  
HURST, and JARED STANDIFORD  
24 individually, and on behalf of all others  
similarly situated,

25 Plaintiffs,

26 vs.

27 AUDI AG and AUDI OF AMERICA, LLC,

28 Defendants.

Case No.: 3:16-cv-6648

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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**NATURE OF THE CASE**

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

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

17           3.       The vehicles containing the illegal CO<sub>2</sub> defeat device include at least those  
18 vehicles Audi equipped with (1) a ZF 8HP55 “AL 551” transmission, including, but not limited  
19 to, the A6, A8, Q5, and Q7 models or (2) a DL 501-7Q “DL 501” transmission, including, but not  
20 limited to, the Audi S4, S5, S6, S7 models (collectively the “Defective Vehicles”).

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

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

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

**PARTIES**

*Plaintiffs*

11. Plaintiffs MONICA and BRUCE HOLCOMB are citizens of California and residents of Redwood City, California. Mr. and Mrs. Holcomb purchased their 2007 Audi Q7 from an Audi dealership in Oakland, California.

12. Plaintiff TED SCHRUBBE is a citizen of Wisconsin and a resident of Elm Grove, Wisconsin. Mr. Schrubbe purchased his 2013 Audi Q7 from Audi Exchange in Chicago, Illinois.

13. Plaintiff GEERT WENES is a citizen of New Mexico and a resident of Santa Fe, New Mexico. Mr. Wenes purchased his 2013 Audi Q5 from Audi/Mercedes-Benz/Porsche of Albuquerque, in Albuquerque, New Mexico.

14. Plaintiff BRIAN PERELMUTER is a citizen of Connecticut and a resident of Southbury, Connecticut. Dr. Perelmutter purchased his 2016 Audi Q5 2.0T from Valenti Audi in Watertown, Connecticut.

15. Plaintiff JASON CAPIZZI is a citizen of New Jersey and a resident of West New York, New Jersey. Mr. Capizzi leased his 2015 Audi Q5 2.0T from Biener Audi in Great Neck, New York.

16. Plaintiff RALPH MAY is a citizen of Pennsylvania and a resident of Union Dale, Pennsylvania. Mr. May purchased his 2014 Audi Q5 from Audi Newton in Newton, New Jersey.

17. Plaintiff WILLIAM BARROIS is a citizen of Alabama and a resident of Fairhope, Alabama. Mr. Barrois purchased his 2012 Audi Q7 from Audi New Orleans in New Orleans, Louisiana.

18. Plaintiff CURTIS HURST is a citizen of Pennsylvania and a resident of Yeadon, Pennsylvania. Mr. Hurst purchased his 2009 Audi A6 from Cutrubeus Audi of Layton in Layton, Utah.

19. Plaintiff JARED STANDIFORD is a citizen of Arizona and a resident of Litchfield Park, Arizona. Mr. Standiford purchased his 2017 Audi Q7 from Audi Peoria in Peoria, Arizona.

1                    Defendants

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                                    **FACTS COMMON TO ALL COUNTS**

15            22.     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: CO<sub>2</sub>.<sup>1</sup> This newly-discovered CO<sub>2</sub> defeat device is in addition to the NOx defeat device

28            <sup>1</sup> German authorities—namely the German Motor Transportation Authority (“KBA”)—were not

*Footnote continued on next page*

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.<sup>2</sup>  
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.<sup>3</sup>

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<sub>2</sub> 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<sub>2</sub>, 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<sub>2</sub> emissions  
21 in Audi vehicles and questioned Audi about these results. Reports indicate that Audi lied to the  
22 KBA, however, telling them that their vehicles would not contain software allowing them to  
23 detect dynamometer testing and alter the vehicles’ performance as a result. Based CARB’s  
24 revelations, German authorities have renewed their investigations. Kayhan Oezgenc and Jan C.  
25 Wehmeyer, *This is How the Manufacturer Cheated on CO<sub>2</sub>*, Bild am Sonntag (November 5,  
26 2016) <http://www.bild.de/bild-plus/auto/auto-news/audi/so-schummelte-der-hersteller-bei-co-48621300.bild.html>; Ministry of Transportation Examines Accusations Against Audi,  
27 Handelsblatt (November 7, 2016) <http://www.handelsblatt.com/politik/deutschland/abgaswerte-manipulation-verkehrsministerium-prueft-vorwuerfe-gegen-audi/14804236.html>.

28 <sup>2</sup> Bertel Schmitt, *CARB Finds New Audi Defeat Device, German Newspaper Digs Up Smoking Gun Document*, Forbes (November 6, 2016)  
<http://www.forbes.com/sites/bertelschmitt/2016/11/06/carb-finds-new-audi-defeat-device-german-paper-digs-up-smoking-gun-document/#5f12b7a51ce8>.

<sup>3</sup> *New Accusation of Cheating Against Audi*, Handelsblatt (November 13, 2016)  
<http://www.handelsblatt.com/unternehmen/industrie/manipulation-der-co2-werte-neue-schummelvorwuerfe-gegen-audi/14835360.html>.



1 as the “warm-up” function remains activated, the automatic transmission remains in a “switching  
2 program” that produces a low engine speed, consumes less fuel, and produces less CO<sub>2</sub>.

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).<sup>4</sup> 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 CO<sub>2</sub>” program, works by causing  
12 the Defective Vehicles to shift gears early to maintain artificially low engine revs and emissions.

13 29. *At all other times*—that is, when the Defective Vehicles are actually being driven  
14 under normal conditions—the transmission computer switches to “road calibration” mode which  
15 offers full power to the driver and which results in increased fuel consumption and greater CO<sub>2</sub>  
16 emissions. Indeed, the road calibration mode activates once the driver turns the steering wheel 15  
17 degrees, something happens almost immediately under normal driving conditions.

18 30. This defeat device scheme allowed Audi to deceptively misrepresent the Defective  
19 Vehicles’ fuel consumption and CO<sub>2</sub> emissions to governmental authorities and to the consuming  
20 public. A vehicle’s advertised fuel economy, which is listed on the “Monroney sticker” or  
21 window sticker, is determined by driving a vehicle over five standardized driving patterns (or  
22 drive cycles), all of which are performed in a laboratory on a dynamometer where the conditions  
23 for all tests can be controlled. These driving cycles include cold starts, hot starts, highway  
24 driving, aggressive and high speed driving, driving with the air conditioner in use under

---

25 <sup>4</sup> The defeat device software is imbedded in the TCM. The TCM’s primary function is to  
26 establish shift logic by reacting to signals from sensors monitoring coolant temperature, exhaust  
27 temperature, ignition timing, crankshaft and camshaft positioning, fuel mixture and air flow  
28 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.

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 (CO<sub>2</sub>). 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.

13 32. Based on this equation, as the amount of CO<sub>2</sub> produced increases, the gasoline  
14 used increases and the fuel economy decreases. Therefore, if a Defective Vehicle produced less  
15 CO<sub>2</sub> during laboratory testing, but higher CO<sub>2</sub> 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.



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

3 39. Prior to the date of this Complaint, Audi knew of the defeat device in the  
4 Defective Vehicles, but continued to manufacture, market, distribute, lease, and/or sell the  
5 Defective Vehicles to Plaintiffs and the other Class members. In doing so, Audi concealed from  
6 or failed to notify Plaintiffs and the other Class members about the true nature of the Defective  
7 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**

15 42. 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**

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 **Nationwide Class**

27 All persons and entities within the United States (including its  
28 Territories and the District of Columbia) that purchased or leased a  
Defective Vehicle.



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

1  
2 47. **Numerosity.** 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 and  
4 is within the exclusive control of Audi and its affiliated dealerships, Audi has sold at least  
5 100,000 Defective Vehicles in the United States, including thousands in the State of California.

6 48. **Commonality.** The Claims of Plaintiffs and the Nationwide and State Classes  
7 involve common questions of fact and law that will predominate over any individual issues.

8 These common questions include, but are not limited to:

- 9 a. Whether the Defective Vehicles that Audi designed, manufactured,  
10 marketed, distributed, leased, and/or sold contained a concealed defeat  
11 device and emitted unlawful levels of carbon dioxide during their normal  
12 use;
- 13 b. Whether Audi designed, manufactured, marketed, distributed, leased,  
14 and/or sold the Defective Vehicles and/or their emissions-related systems,  
15 including defeat devices, in the United States;
- 16 c. 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 its representations  
20 regarding the emissions and/or fuel efficiency of the Defective Vehicles  
21 were false at the time of designing, marketing, distributing, 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 defeat device constitute  
25 material facts that reasonable consumers would have considered in  
26 deciding whether to purchase a Defective Vehicle;
- 27 f. Whether Audi's conduct violates consumer protection statutes and other  
28 laws as asserted herein;

- 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          l.     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







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 emission-  
10 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.

19           67.     Audi breached these written and implied warranties as described in detail above.  
20 Without limitation, the Defective Vehicles share a common design defect in that they emit more  
21 carbon dioxide than: (a) is allowable under the applicable regulations, and (b) Audi represented  
22 were emitted to their customers, the public, and regulators.

23           68.     Plaintiffs and each of the other Nationwide Class members have had sufficient  
24 direct dealings with either Audi or its agents (including Audi dealerships) to establish privity of  
25 contract between Audi, on the one hand, and Plaintiffs and each of the other Nationwide Class  
26 members, on the other hand. Nonetheless, privity is not required here because Plaintiffs and each  
27 of the other Nationwide Class members are intended third-party beneficiaries of contracts  
28 between Audi and its dealers, and specifically, of Audi's implied warranties. The dealers were not

1 intended to be the ultimate consumers of the Defective Vehicles and have no rights under the  
2 warranty agreements provided with the Defective Vehicles; the warranty agreements were  
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 **COUNT II**

### 21 **Fraud**

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

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

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

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

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

8 75. Audi represented that the Defective Vehicles had functioning emissions systems  
9 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.

16 78. Audi's scheme to design and install defeat device software in the Defective  
17 Vehicles for the specific purpose of circumventing U.S. law, and then concealing their fraudulent  
18 scheme, reveals a corporate culture that emphasized sales and profits over integrity and public  
19 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 81. Plaintiffs and Class members were not aware of the concealed and misrepresented  
24 material facts referenced above, and they would not have acted as they did had regulators or the  
25 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.

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

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

9 **COUNT III**  
10 **Breach of Contract**  
11 **(On Behalf of the Nationwide Class or, in the Alternative, the Subclasses)**

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

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

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

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

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

1 device software and thus exceeded, during normal use, federal and state emission limits, Audi  
2 violated Plaintiffs and the other Class members' fair and reasonable expectations under their  
3 respective contracts. 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 the other Class members.

6 89. As a direct and proximate result of Audi's breach, Plaintiffs and the other Class  
7 members have been damaged in an amount to be proven at trial, which shall include, but is not  
8 limited to, all compensatory damages, incidental and consequential damages, and other damages  
9 allowed by law.

10 **COUNT IV**  
11 **Unjust Enrichment**  
**(On 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 herein.

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

16 92. Audi benefitted from selling and leasing, at an unjust profit, Defective Vehicles  
17 that had artificially 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, and 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 were 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 amount of their unjust enrichment should be  
27 disgorged and returned to Plaintiffs and the other Class members, in an amount to be proven at  
28 trial.

**COUNT V**  
**Violation of the Alabama Deceptive Trade Practices Act,**  
**Ala. Code § 8-19-1, *et seq.***  
**(On Behalf of the Alabama Class)**

1  
2  
3  
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<sub>2</sub>. The result was what Audi intended—the Defective Vehicles passed emissions  
27 testing by way of deliberately induced false readings.  
28

1           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 technology. Plaintiffs and Alabama Class members did not and could not unravel  
4 Audi's deception on their own.

5           107. Audi thus violated the Alabama DTPA by, at minimum: representing that  
6 Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have;  
7 representing that Defective Vehicles are of a particular standard, quality, and grade when they are  
8 not; advertising Defective Vehicles with the intent not to sell or lease them as advertised; and  
9 representing that the subject of a transaction involving Defective Vehicles has been supplied in  
10 accordance with a previous representation when it has not.

11           108. Audi intentionally and knowingly misrepresented material facts regarding the  
12 Defective Vehicles 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 safety risks, the true nature of the Defective Vehicles, because Audi:

- 16           a. possessed exclusive knowledge that they were manufacturing, selling, and  
17 distributing vehicles throughout the United States that did not comply with  
18 regulations;  
19           b. intentionally concealed the foregoing from regulators, Plaintiff, and/or  
20 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  
23 withholding material facts from Plaintiffs that contradicted these  
24 representations.

25           111. Audi fraudulent use of the "defeat device" and its concealment of the true  
26 characteristics of the Defective Vehicles' fuel consumption and CO<sub>2</sub> emissions were material to  
27 Plaintiff and the Alabama Class.

28           112. Audi's unfair or deceptive acts or practices were likely to and did in fact deceive  
regulators and reasonable consumers, including Plaintiff.

          113. Plaintiff and the Alabama Class suffered ascertainable loss and actual damages as  
a direct and proximate result of Audi's misrepresentations and its concealment of and failure to



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 **COUNT VI**  
12 **Violation of the Arizona Consumer Fraud Act,**  
13 **Ariz. Rev. Stat. § 44-1521, *et seq.***  
**(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

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 test mode only  
4 during emissions testing. During normal operations, the Defective Vehicles would emit grossly  
5 larger quantities of noxious CO<sub>2</sub> gasses. The result was what Audi intended—the Defective  
6 Vehicles passed emissions testing by way of deliberately induced false readings.

7           121. Plaintiff and Arizona 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. Plaintiff and Arizona Class members did not and could not unravel  
10 Audi’s deception on their own.

11           122. Audi thus violated the Arizona CFA 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           123. Audi intentionally and knowingly misrepresented material 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 safety risks, the true nature of the Defective Vehicles, because Audi:

- 20           a. possessed exclusive knowledge that they were manufacturing, selling, and  
21 distributing vehicles throughout the United States that did not comply with  
22 regulations;  
23           b. intentionally concealed the foregoing from regulators, Plaintiff, and Class  
24 members; and/or  
25           c. made incomplete representations about the Defective Vehicles generally,  
26 and the use of the defeat device in particular, while purposefully  
27 withholding material facts from Plaintiffs that contradicted these  
28 representations.

26           126. Audi fraudulent use of the “defeat device” and its concealment of the true  
27 characteristics of the Defective Vehicles’ fuel consumption and CO<sub>2</sub> emissions were material to  
28 Plaintiff and the Arizona Class.



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

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 **COUNT VIII**  
16 **Violation of the Song-Beverly Consumer Protection Act, Breach of Express Warranty,**  
17 **Cal Civ. Code §§ 1790, *et seq.***  
**(On Behalf of the California Class)**

18 145. Plaintiffs incorporate by reference all allegations in this Complaint as though fully  
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).



1 with “defeat devices.” These defeat devices are designed to secretly limit emissions and increase  
2 fuel efficiency when the vehicles are being subject to regulatory emissions and fuel efficiency  
3 testing. However, when the Defective Vehicles are in regular use on the road, they emit a  
4 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.

24 163. Audi’s conduct constitutes unfair acts or practices as defined by the California  
25 Consumers Legal Remedies Act (the “CLRA”).

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

1 165. Plaintiffs and the California Class seek an order enjoining 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 Cal. Civ. Code § 1770(a)  
6 relating to the Defective Vehicles purchased by Plaintiffs and California Class members, and  
7 demand that Audi corrects or agrees to correct the actions described therein within thirty (30)  
8 days of such notice. If Audi fails to do so, Plaintiffs will amend this Complaint as of right (or  
9 otherwise seek leave to amend the Complaint) to include compensatory and monetary damages to  
10 which Plaintiffs and Class members are entitled.

11 167. Audi’s conduct described herein is fraudulent, wanton, and malicious.

12 **COUNT X**  
13 **Violation of Connecticut Unlawful Trade Practice Act,**  
14 **Conn. Gen. Stat. § 42-110a, *et seq.***  
**(On Behalf of the Connecticut Class)**

15 168. Plaintiffs incorporate by reference all allegations in this Complaint as though fully  
16 set forth herein.

17 169. Plaintiffs Brian Perelmuter (for the purpose of this Count, “Plaintiff”) brings this  
18 Count on behalf of himself and the Connecticut Class.

19 170. The Connecticut Unfair Trade Practices Act (“Connecticut UTPA”) provides: “No  
20 person shall engage in unfair methods of competition and unfair or deceptive acts or practices in  
21 the conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110b(a).

22 171. Audi is a “person” within the meaning of Conn. Gen. Stat. § 42-110a(3).

23 172. Audi engaged in “trade” or “commerce” within the 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 herein.

27 174. In the course of its business, Audi concealed and suppressed material facts  
28 concerning the Defective Vehicles. Audi accomplished this by installing an illegal defeat device



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<sub>2</sub> 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  
19 distributing vehicles throughout the United States that did not comply with  
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  
23 withholding material facts from Plaintiffs that contradicted these  
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<sub>2</sub> 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.

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 to  
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.



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           a. possessed exclusive knowledge that they were manufacturing, selling, and  
11 distributing vehicles throughout the United States that did not comply with  
12 regulations;  
13           b. intentionally concealed the foregoing from regulators, Plaintiff, and/or  
14 Class members; and/or  
15           c. made incomplete representations about the Defective Vehicles generally,  
16 and the use of the defeat device in particular, while purposefully  
17 withholding material facts from Plaintiffs that contradicted these  
18 representations.

19           201. Audi fraudulent use of the “defeat device” and its concealment of the true  
20 characteristics of the Defective Vehicles’ fuel consumption and CO<sub>2</sub> emissions were material to  
21 Plaintiff and the New Jersey Class.

22           202. Audi’s unfair or deceptive acts or practices were likely to and did in fact deceive  
23 regulators and reasonable consumers, including Plaintiff.

24           203. Plaintiff and the New Jersey Class suffered ascertainable loss and actual damages  
25 as a direct and proximate result of Audi’s misrepresentations and its concealment of and failure to  
26 disclose material information. Plaintiff and the New Jersey Class members who purchased or  
27 leased the Defective Vehicles would not have purchased or leased them at all and/or—if the  
28 Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—  
would have paid significantly less for them. Plaintiff and the New Jersey Class also suffered  
diminished value of their vehicles, as well as lost or diminished use.



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 CO<sub>2</sub> 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.

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           a. possessed exclusive knowledge that they were manufacturing, selling, and  
6 distributing vehicles throughout the United States that did not comply with  
7 regulations;
- 8           b. intentionally concealed the foregoing from regulators, Plaintiff, and/or  
9 Class members; and/or
- 10           c. made incomplete representations about the Defective Vehicles generally,  
11 and the use of the defeat device in particular, while purposefully  
12 withholding material facts from Plaintiffs that contradicted these  
13 representations.

14           220. Audi fraudulent use of the “defeat device” and its concealment of the true  
15 characteristics of the Defective Vehicles’ fuel consumption and CO<sub>2</sub> emissions were material to  
16 Plaintiff and the New Mexico Class.

17           221. Audi’s unfair or deceptive acts or practices were likely to and did in fact deceive  
18 regulators and reasonable consumers, including Plaintiff.

19           222. Plaintiff and the New Mexico Class suffered ascertainable loss and actual damages  
20 as a direct and proximate result of Audi’s misrepresentations and its concealment of and failure to  
21 disclose material information. Plaintiff and the New Mexico Class members who purchased or  
22 leased the Defective Vehicles would not have purchased or leased them at all and/or—if the  
23 Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—  
24 would have paid significantly less for them. Plaintiff and the New Mexico Class also suffered  
25 diminished value of their vehicles, as well as lost or diminished use.

26           223. Plaintiff and the New Mexico Class seek monetary relief against Audi in an  
27 amount to be determined at trial. Plaintiff and the New Mexico Class also seek punitive damages  
28 because Audi engaged in aggravated and outrageous conduct with an evil mind.

          224. Plaintiff also seek an order enjoining Audi’s unfair, unlawful, and/or deceptive  
practices, attorneys’ fees, and any other just and proper relief available under the New Mexico  
UTPA.





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<sub>2</sub> 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  
22           distributing vehicles throughout the United States that did not comply with  
              regulations;
  - 23           b. intentionally concealed the foregoing from regulators, Plaintiffs, and/or  
24           Class members; and/or
  - 25           c. made incomplete representations about the Defective Vehicles generally,  
26           and the use of the defeat device in particular, while purposefully  
              withholding material facts from Plaintiffs that contradicted these  
27           representations.
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1           241. Audi fraudulent use of the “defeat device” and its concealment of the true  
2 characteristics of the Defective Vehicles’ fuel consumption and CO<sub>2</sub> emissions were material to  
3 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.

19           246. Audi had an ongoing duty to all Audi customers to refrain from unfair and  
20 deceptive practices under the Pennsylvania UTPA. All owners of Defective Vehicles suffered  
21 ascertainable loss in the form of the diminished value of their vehicles as a result of Audi’s  
22 deceptive and unfair acts and practices made in the course of Audi’s business.

23           247. Audi’s violations present a continuing risk to Plaintiffs as well as to the general  
24 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           257. Audi thus violated the Wisconsin DTPA 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           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           a. possessed exclusive knowledge that they were manufacturing, selling, and  
11 distributing vehicles throughout the United States that did not comply with  
12 regulations;  
13           b. intentionally concealed the foregoing from regulators, Plaintiff, and/or  
14 Class members; and/or  
15           c. made incomplete representations about the Defective Vehicles generally,  
16 and the use of the defeat device in particular, while purposefully  
17 withholding material facts from Plaintiffs that contradicted these  
18 representations.

19           261. Audi fraudulent use of the “defeat device” and its concealment of the true  
20 characteristics of the Defective Vehicles’ fuel consumption and CO<sub>2</sub> emissions were material to  
21 Plaintiff and the Wisconsin Class.

22           262. Audi’s unfair or deceptive acts or practices were likely to and did in fact deceive  
23 regulators and reasonable consumers, including Plaintiff.

24           263. Plaintiff and the Wisconsin Class suffered ascertainable loss and actual damages as  
25 a direct and proximate result of Audi’s misrepresentations and its concealment of and failure to  
26 disclose material information. Plaintiff and the Wisconsin Class members who purchased or  
27 leased the Defective Vehicles would not have purchased or leased them at all and/or—if the  
28 Vehicles’ true nature had been disclosed and mitigated, and the Vehicles rendered legal to sell—  
would have paid significantly less for them. Plaintiff and the Wisconsin Class also suffered  
diminished value of their vehicles, as well as lost or diminished use.



- 1 D. Award Plaintiffs and Class members actual damages sustained;
- 2 E. Award Plaintiffs and Class members such additional damages, over and above the  
3 amount of their 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, an 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 the defect;
- 11 H. Award Plaintiffs and Class members punitive damages;
- 12 I. Award Plaintiffs and Class members their reasonable attorneys' fees and  
13 reimbursement 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.

18 Respectfully submitted,

19 Dated: November 16, 2016

20 By: /s/ Elizabeth J. Cabraser  
21 Elizabeth J. Cabraser

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