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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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IN RE: VOLKSWAGEN 'CLEAN DIESEL'
14 MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

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This Document Relates to:

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Porsche Gasoline Litigation

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**AMENDED CONSOLIDATED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

MDL No. 2672 CRB (JSC)

The Honorable Charles R. Breyer

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1 **I. INTRODUCTION**

2 Plaintiffs, individually and on behalf of all others similarly situated (the “Class”), allege the
3 following against Dr. Ing. H.c. F. Porsche AG (“Porsche AG”), Porsche Cars North America, Inc.
4 (“Porsche NA”) (together, “Porsche”), and Volkswagen AG (collectively, “Defendants”) based,
5 where applicable, on personal knowledge, information and belief, and the thorough pre-filing
6 investigation and vehicle testing of counsel and their experts.

7 **II. NATURE OF THE ACTION**

8 1. This case exposes yet another emissions and fuel economy cheating scheme within
9 the Volkswagen corporate family. As with the “Clean Diesel” cases and the “Audi CO₂” gasoline
10 cases that followed, Plaintiffs here allege that Defendants manipulated test results for
11 Porsche-branded vehicles sold in the United States, causing those vehicles to fraudulently pass
12 emissions tests, while in truth the affected vehicles were emitting more pollution and obtaining
13 worse fuel economy than Porsche advertised to consumers and represented to regulators.

14 2. The broad strokes of this latest scheme were first published in German press reports,
15 which revealed that Germany’s Federal Motor Transport Authority, KBA, is investigating Porsche
16 for manipulating the emissions systems of certain vehicles.

17 3. Following these press reports, Plaintiffs conducted their own extensive
18 investigation and expert testing that both confirms and expands upon the publicly reported
19 allegations of emissions and fuel economy fraud. This investigation has revealed an extensive
20 scheme implemented with the common goal of artificially decreasing emissions test results and
21 increasing fuel economy results to evade fleet-wide and vehicle-specific emissions regulations and
22 to deceive Plaintiffs and the Class about the true nature of Porsche’s vehicles. Plaintiffs’
23 investigation shows that this scheme affects hundreds of thousands of Porsche vehicles sold in the
24 United States.

25 4. In short, the two main prongs of the scheme are as follows.¹

26
27 ¹ Initial press reports and earlier versions of Plaintiffs’ complaint identified a third potential fraud,
28 labeled the “Testing Software” fraud. Subsequent investigation revealed that the third fraud did not
impact the relevant vehicles independent from the other two prongs addressed herein.

1 a. First, Defendants physically altered the hardware (the gears connecting the
 2 drive shaft and rear axle) and manipulated the software of testing vehicles, rendering such vehicles
 3 different from the vehicles actually produced and sold to consumers. These testing vehicles emitted
 4 fewer pollutants and were more fuel efficient than the production vehicles that consumers bought
 5 and leased. This scheme is labeled herein as the “Rear Axle” or “Axle Ratio” fraud.

6 b. Second, Defendants falsely attested that certain vehicles’ high-performance
 7 driving mode, known as Sport Plus, met emissions requirements when in reality the vehicles
 8 exceeded legal limits of certain pollutants in Sport Plus mode, and thus were illegal to import or sell
 9 in the United States. This scheme is labeled herein as the “Sport Plus” fraud, and is further
 10 evidenced by a recent “Stop Sale” in which Porsche ordered dealerships not to “sell, lease, rent, or
 11 loan” a substantial list of vehicles equipped with Sport Plus due to “emissions performance” issues.

12 5. This manipulation was deceptive, illegal, and material to consumers and regulators.
 13 The scheme was also devised by the same companies, in the same time period, and in the same
 14 places as the “Clean Diesel” and “Audi CO₂” emissions and fuel economy fraud, to which this plot
 15 bears a striking resemblance.

16 6. Through this action, Plaintiffs and the proposed Class seek to enjoin Defendants’
 17 deceptive conduct and recover the economic damages it caused.

18 7. The Class Vehicles at issue in this Complaint—which were identified after
 19 significant expert testing and discovery—include approximately 500,000 vehicles implicated by
 20 one or both prongs of the scheme. The Class Vehicles are listed in the table below:

21

Make	Code	Model	Derivative/ Transmission	Model Years
Porsche	981 I	Boxster	Base/AT	2013 – 2016
Porsche	981 I	Cayman	Base/AT	2014 – 2016
Porsche	981 I	Boxster	Base/MT	2013 – 2016
Porsche	981 I	Cayman	Base/MT	2014 – 2016
Porsche	981 I	Boxster	S/AT	2013 – 2016
Porsche	981 I	Cayman	S/AT	2014 – 2016
Porsche	981 I	Boxster	S/MT	2013 – 2016
Porsche	981 I	Cayman	S/MT	2014 – 2016
Porsche	981 I	Boxster/Cayman	GTS/AT	2015 – 2016
Porsche	981 I	Boxster	Base	2013 – 2016

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Make	Code	Model	Derivative/ Transmission	Model Years
Porsche	981 I	Cayman	Base	2014 – 2016
Porsche	981 I	Boxster	S	2013 – 2016
Porsche	981 I	Cayman	S	2014 – 2016
Porsche	981 I	Boxster/Cayman	GTS	2015 – 2016
Porsche	981 I	Boxster/Cayman	GTS/MT	2015-2016
Porsche	981 I	Boxster	Spyder/MT	2016
Porsche	981 I	Cayman	GT4/MT	2016
Porsche	981 I	Cayman	GT3/MT	2015-2016
Porsche	982	Boxster/Cayman	Base/AT	2017-2019
Porsche	982	Boxster/Cayman	Base/MT	2017-2019
Porsche	982	Boxster/Cayman	S/AT	2017-2019
Porsche	982	Boxster/Cayman	S/MT	2017-2019
Porsche	982	Boxster/Cayman	GTS/AT	2018-2019
Porsche	982	Boxster/Cayman	GTS/MT	2018-2019
Porsche	987 I	Boxster	Base/AT	2005-2008
Porsche	987 I	Boxster	Base/MT	2005-2008
Porsche	987 I	Cayman	Base/AT	2007-2008
Porsche	987 I	Cayman	Base/MT	2007-2008
Porsche	987 I	Boxster	S/AT	2005-2008
Porsche	987 I	Boxster	S/MT	2005-2008
Porsche	987 I	Cayman	S/AT	2006-2008
Porsche	987 I	Cayman	S/MT	2006-2008
Porsche	987 II	Boxster/Cayman	Base/AT	2009 – 2012
Porsche	987 II	Boxster/Cayman	S/AT	2009 – 2012
Porsche	987 II	Boxster/Cayman	S/MT	2009 – 2012
Porsche	987 II	Boxster/Cayman	Base/MT	2009-2012
Porsche	987 II	Boxster	Spyder/AT	2011-2012
Porsche	987 II	Boxster	Spyder/MT	2011-2012
Porsche	987 II	Cayman	R/AT	2012
Porsche	987 II	Cayman	R/MT	2012
Porsche	991 I	Carrera C2 Coupe/Cabrio	Base/AT	2012 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	Base/AT	2013 – 2016
Porsche	991 I	Targa 4	Base/AT	2014-2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	S/MT	2012 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	S/AT	2013 – 2016
Porsche	991 I	Targa 4	S/AT	2014-2016
Porsche	991 I	Targa 4	GTS/AT	2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	GTS	2015 – 2016

Make	Code	Model	Derivative/ Transmission	Model Years
Porsche	991 I	Carrera C4 Coupe/Cabrio	GTS	2015 – 2016
Porsche	991 I	911	GT3	2014 – 2016 ²
Porsche	991 I	911	GT3 RS	2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	S	2012 – 2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	Base	2012 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	Base	2013 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	S	2013 – 2016
Porsche	991 I	Targa 4	Base	2014 – 2016
Porsche	991 I	Targa 4	S	2014 – 2016
Porsche	991 I	Targa 4	GTS	2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	Base/MT	2012-2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	Base/MT	2013-2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	S/MT	2013–2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	S/AT	2012-2016
Porsche	991 I	Targa 4	Base/MT	2014-2016
Porsche	991 I	Targa 4	S/MT	2014-2016
Porsche	991 I	Targa 4	GTS/MT	2016
Porsche	991 I	Carrera Coupe/Cabrio	Turbo/AT	2014-2016
Porsche	991 I	Carrera Coupe/Cabrio	Turbo S/AT	2014-2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	GTS/AT	2015 – 2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	GTS/MT	2015 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	GTS/MT	2015 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	GTS/AT	2015 – 2016
Porsche	991 I	911	GT3/AT	2014 – 2016
Porsche	991 I	911	GT3 RS/AT	2016
Porsche	991 I	911	R/MT	2016
Porsche	991 II	Carrera C2 Coupe/Cabrio	Base/AT	2017-2019
Porsche	991 II	Carrera C2 Coupe/Cabrio	Base/MT	2017-2019
Porsche	991 II	Carrera C4 Coupe/Cabrio	Base/AT	2017-2019
Porsche	991 II	Carrera C4 Coupe/Cabrio	Base/MT	2017-2019
Porsche	991 II	Carrera C2 Coupe/Cabrio	S/AT	2017-2019
Porsche	991 II	Carrera C2 Coupe/Cabrio	S/MT	2017-2019
Porsche	991 II	Carrera C4 Coupe/Cabrio	S/AT	2017-2019
Porsche	991 II	Carrera C4 Coupe/Cabrio	S/MT	2017-2019
Porsche	991 II	Targa	Base/AT	2017-2019
Porsche	991 II	Targa	Base/MT	2017-2019
Porsche	991 II	Targa	S/AT	2017-2019

² Only 991 I GT3 vehicles with certain software versions are included in the Sport+ Class.

	Make	Code	Model	Derivative/ Transmission	Model Years
1	Porsche	991 II	Targa	S/MT	2017-2019
2	Porsche	991 II	Targa	GTS/AT	2017-2019
3	Porsche	991 II	Targa	GTS/MT	2017-2019
4	Porsche	991 II	Carrera C2 Coupe/Cabrio	GTS/AT	2017-2019
5	Porsche	991 II	Carrera C2 Coupe/Cabrio	GTS/MT	2017-2019
6	Porsche	991 II	Carrera C4 Coupe/Cabrio	GTS/AT	2017-2019
7	Porsche	991 II	Carrera C4 Coupe/Cabrio	GTS/MT	2017-2019
8	Porsche	991 II	Carrera	T/AT	2018-2019
9	Porsche	991 II	Carrera	T/MT	2018-2019
10	Porsche	991 II	Carrera Coupe/Cabrio	Turbo/AT	2017-2019
11	Porsche	991 II	Carrera Coupe/Cabrio	Turbo S/AT	2017-2019
12	Porsche	991 II	911	GT3/AT	2018
13	Porsche	991 II	911	GT3/MT	2018
14	Porsche	991 II	911	GT2 RS/AT	2018
15	Porsche	997 I	Carrera C2 Coupe/Cabrio	Base/AT	2005 – 2008
16	Porsche	997 I	Carrera C2 Coupe/Cabrio	Base/MT	2008
17	Porsche	997 I	Carrera C2 Coupe/Cabrio	S/AT	2005 – 2008
18	Porsche	997 I	Carrera C2 Coupe/Cabrio	S/MT	2005 – 2008
19	Porsche	997 I	Carrera Coupe	Turbo/AT	2007 – 2009
20	Porsche	997 I	Carrera Cabrio	Turbo/AT	2008 – 2009
21	Porsche	997 I	Carrera C2 Coupe/Cabrio	Base/MT	2005-2007
22	Porsche	997 I	Carrera C4 Coupe/Cabrio	Base/AT	2006-2008
23	Porsche	997 I	Carrera C4 Coupe/Cabrio	Base/MT	2006-2008
24	Porsche	997 I	Carrera C4 Coupe/Cabrio	S/AT	2006-2008
25	Porsche	997 I	Carrera C4 Coupe/Cabrio	S/MT	2006-2008
26	Porsche	997 I	Targa	Base/AT	2007-2008
27	Porsche	997 I	Targa	Base/MT	2007-2008
28	Porsche	997 I	Targa	S/AT	2007-2008
29	Porsche	997 I	Targa	S/MT	2007-2008
30	Porsche	997 I	911 Coupe	Turbo/MT	2007-2009
31	Porsche	997 I	911 Cabrio	Turbo/MT	2008-2009
32	Porsche	997 I	911	GT3/MT	2007-2008
33	Porsche	997 I	911	GT3 RS/MT	2007-2008
34	Porsche	997 I	911	GT2/MT	2008-2009
35	Porsche	997 II	Carrera C2 Coupe/Cabrio	Base/AT	2009 – 2012
36	Porsche	997 II	Carrera C2 Coupe/Cabrio	S/AT	2009 – 2012
37	Porsche	997 II	911 C2 Coupe/Cabrio	GTS/AT	2011-2012
38	Porsche	997 II	Carrera C2 Coupe/Cabrio	Base/MT	2009-2012
39	Porsche	997 II	Carrera C4 Coupe/Cabrio	Base/AT	2009-2012

1	Make	Code	Model	Derivative/ Transmission	Model Years
2	Porsche	997 II	Carrera C4 Coupe/Cabrio	Base/MT	2009-2012
3	Porsche	997 II	Carrera C2 Coupe/Cabrio	S/MT	2009-2012
4	Porsche	997 II	Carrera C4 Coupe/Cabrio	S/AT	2009-2012
5	Porsche	997 II	Carrera C4 Coupe/Cabrio	S/MT	2009-2012
6	Porsche	997 II	Targa	Base/AT	2009-2012
7	Porsche	997 II	Targa	Base/MT	2009-2012
8	Porsche	997 II	Targa	S/AT	2009-2012
9	Porsche	997 II	Targa	S/MT	2009-2012
10	Porsche	997 II	911 C2 Coupe/Cabrio	GTS/MT	2011-2012
11	Porsche	997 II	911 C4 Coupe/Cabrio	GTS/AT	2012
12	Porsche	997 II	911 C4 Coupe/Cabrio	GTS/MT	2012
13	Porsche	997 II	911	Speedster/AT	2011
14	Porsche	997 II	911 Coupe/Cabrio	Turbo/AT	2010-2013
15	Porsche	997 II	911 Coupe/Cabrio	Turbo/MT	2010-2013
16	Porsche	997 II	911 Coupe/Cabrio	Turbo S/AT	2011-2013
17	Porsche	997 II	911	GT3/MT	2010-2011
18	Porsche	997 II	911	GT3 RS/MT	2010-2011
19	Porsche	E1 I	Cayenne	Base/AT	2005-2006
20	Porsche	E1 I	Cayenne	Base/MT	2005-2006
21	Porsche	E1 I	Cayenne	S/AT	2005-2006
22	Porsche	E1 I	Cayenne	Turbo/AT	2005-2006
23	Porsche	E1 I	Cayenne	Turbo S/AT	2006
24	Porsche	E1 II	Cayenne	Base/MT	2008-2010
25	Porsche	E1 II	Cayenne	Base/AT	2008-2010
26	Porsche	E1 II	Cayenne	S/AT	2008-2010
27	Porsche	E1 II	Cayenne	GTS/AT	2008-2010
28	Porsche	E1 II	Cayenne	GTS/MT	2008-2010
29	Porsche	E1 II	Cayenne	Turbo/AT	2008-2010
30	Porsche	E1 II	Cayenne	Turbo S/AT	2009-2010
31	Porsche	E2 I	Cayenne	S/AT	2011 – 2014
32	Porsche	E2 I	Cayenne	Turbo/AT	2012 – 2014
33	Porsche	E2 I	Cayenne	Base/AT	2011-2014
34	Porsche	E2 I	Cayenne	Base/MT	2011-2014
35	Porsche	E2 I	Cayenne	GTS/AT	2013-2014
36	Porsche	E2 I	Cayenne	Turbo S/AT	2014
37	Porsche	E2 I	Cayenne	Turbo/AT	2011
38	Porsche	E2 II	Cayenne	S/AT	2017 – 2018
39	Porsche	E2 II	Cayenne	GTS	2016 – 2018
40	Porsche	E2 II	Cayenne	Base/AT	2016-2018

Make	Code	Model	Derivative/ Transmission	Model Years
Porsche	E2 II	Cayenne	S/AT	2015-2016
Porsche	E2 II	Cayenne	Turbo/AT	2015-2018
Porsche	E2 II	Cayenne	Turbo S/AT	2016-2018
Porsche	E2 II	Cayenne	GTS/AT	2016-2018
Porsche	G1 I	Panamera 4	S/AT	2010 – 2013
Porsche	G1 I	Panamera	Base/AT	2011-2013
Porsche	G1 I	Panamera 4	Base/AT	2011-2013
Porsche	G1 I	Panamera	S/AT	2010-2013
Porsche	G1 I	Panamera	GTS/AT	2013
Porsche	G1 I	Panamera	Turbo/AT	2010-2013
Porsche	G1 I	Panamera	Turbo S/AT	2012-2013
Porsche	G1 II	Panamera	Base	2014 – 2016
Porsche	G1 II	Panamera 4	Base	2014 – 2016
Porsche	G1 II	Panamera	S	2014 – 2016
Porsche	G1 II	Panamera 4	S	2014 – 2016
Porsche	G1 II	Panamera 4	GTS	2014 – 2016
Porsche	G1 II	Panamera 4	Turbo	2014 – 2016
Porsche	G1 II	Panamera 4	Turbo S	2014 – 2016
Porsche	G1 II	Panamera	Base/AT	2014-2016
Porsche	G1 II	Panamera 4	Base/AT	2014-2016
Porsche	G1 II	Panamera	S/AT	2014-2016
Porsche	G1 II	Panamera 4	S/AT	2014-2016
Porsche	G1 II	Panamera 4	Turbo/AT	2014-2016
Porsche	G1 II	Panamera 4	Turbo S/AT	2014-2016
Porsche	G1 II	Panamera 4	GTS/AT	2014-2016
Porsche	G2 I	Panamera	Base/AT	2017-2018
Porsche	G2 I	Panamera 4	Base/AT	2017-2018
Porsche	G2 I	Panamera 4	S/AT	2017-2018
Porsche	G2 I	Panamera 4	Turbo/AT	2017-2020
Porsche	G2 I	Panamera 4	Turbo ST/AT	2018-2020
Porsche	Macan	Macan	Base/AT	2017-2018
Porsche	Macan	Macan	S/AT	2015-2018
Porsche	Macan	Macan	GTS/AT	2017-2018
Porsche	Macan	Macan	Turbo/AT	2015-2018

1 **III. PARTIES**

2 **A. Plaintiffs**

3 8. For ease of reference, the following chart identifies the representative Plaintiffs and
4 the state(s) in which they reside and purchased their Class Vehicles:

Class Representative	Model	Model Year	State of Purchase/Lease	State of residence
Allen, Christopher	911 Carrera S	2014	OH	OH
Aronson, John	911 Carrera	2014	IL	IL
Belle, Frank	Panamera	2010	AL	AL
Bloom, Erik	911 Carrera	2012	GA	GA
Chadha, Ashish	911 Carrera	2012	GA	CA
Cohen, Frank	911	2009	CT	NY
Daniels, Rafael	911 Targa 4S	2015	FL	TX
Del Barrio, Ernesto	911 Carrera	2012	CA	CA
Essreg, Alan	911 Turbo S	2015	AL	FL
Fajardo, Mallen	911 Carrera	2007	CA	CA
Henderson, Jeffery	Panamera 4S	2011	LA	LA
Iñiguez, Isaías	Boxster	2015	CA	AZ
Jeng, Frederick	Cayman	2010	CA	CA
Kavan, Andrew	Panamera	2011	UT	NE
Luvice, Saul	Panamera S	2011	PA	PA
Marks, Lee	Boxster S	2015	MO	GA
Masone, Jino	911 Carrera	2015	PA	MD
McCarthy, Robbie	911 Carrera S	2013	PA	PA
Menger, Peter	911 Carrera S	2009	NY	NY
	911 Carrera S	2012	NY	NY
Novales-Li, Philipp	911 GT3 RS	2016	OK	CA
Pearl, George	Boxster	2013	GA	GA
Perkins III, David	911 Carrera 4S	2009	FL	IL
Pinto, Mauricio	911 Carrera	2013	TX	TX
Robinson, Cecil	911	2009	GA	CO
Schubert, Richard	Panamera 4	2012	CA	CA
Sciabarrasi, Luigi	Panamera	2011	CA	CA
	911	2013	NJ	FL
Shady, Sander	Cayenne	2013	FL	FL
	Panamera Platinum	2013	TX	TX
Sotelo II, Oscar	Boxster	2013	NC	FL
Taylor, Orville	911 Carrera S	2012	NY	FL
Tougas, Lawrence	911 Carrera	2017	CA	CA
Vorisek, John	911	2017	NC	NC
Williams, Owen	911 Carrera	2015	NJ	NJ

1 9. Plaintiff **Mallen Fajardo** (for the purpose of this paragraph, “Plaintiff”), a citizen of
2 California, residing in San Bruno, California, purchased a used 2007 Porsche 911 Carrera (for the
3 purpose of this paragraph, the “Class Vehicle”) on or around June 17, 2017, from Volvo Palo Alto
4 in Palo Alto, California. The Class Vehicle is equipped with Sport Plus mode. Plaintiff decided to
5 purchase the Class Vehicle based in part on Porsche’s representations regarding the vehicle’s fuel
6 economy, emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff
7 researched the vehicle by reviewing Porsche’s website, vehicle brochure, and online media, as well
8 as other articles and reviews of the Class Vehicle. At the time of purchase, Plaintiff did not know
9 that the Class Vehicle was designed to deceive regulators and the public, that its advertised fuel
10 economy was fraudulent and overstated, and that it emitted more pollutants than represented and
11 potentially allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle
12 than he would have had it achieved the represented fuel economy, and has been inconvenienced by
13 having to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and
14 proximate result of Defendants’ misconduct.

15 10. Plaintiff **Christopher Allen** (for the purpose of this paragraph, “Plaintiff”), a citizen
16 of Ohio, residing in New Albany, Ohio, purchased a used 2014 Porsche 911 Carrera S (for the
17 purpose of this paragraph, the “Class Vehicle”) on or around January 16, 2020, from Germain
18 Lexus of Dublin, in Dublin, Ohio. The Class Vehicle is equipped with Sport Plus mode. Plaintiff
19 decided to purchase the Class Vehicle based in part on Porsche’s representations regarding the
20 vehicle’s fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle,
21 Plaintiff reviewed articles about the vehicle and researched its specifications, features, and options.
22 Plaintiff also reviewed the Class Vehicle’s Monroney label. At the time of purchase, Plaintiff did
23 not know that the Class Vehicle was designed to deceive regulators and the public, that its
24 advertised fuel economy was fraudulent and overstated, and that it emitted more pollutants than
25 represented and potentially allowed by law. Plaintiff has also paid more for fuel during his
26 possession of the vehicle than he would have had it achieved the represented fuel economy, and has
27 been inconvenienced by having to refill the fuel tank more often. Plaintiff has suffered a concrete
28 injury as a direct and proximate result of Defendants’ misconduct.

1 11. Plaintiff **John Aronson** (for the purpose of this paragraph, “Plaintiff”), a citizen of
2 Illinois, residing in Wayne, Illinois, purchased a used 2014 Porsche 911 Carrera (for the purpose of
3 this paragraph, the “Class Vehicle”) on or around February 8, 2020, from a private sale in Hoffman
4 Estates, Illinois. The Class Vehicle is equipped with Sport Plus mode. Plaintiff decided to purchase
5 the Class Vehicle based in part on Porsche’s representations regarding the vehicle’s fuel economy,
6 emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff reviewed the
7 brochure for the 2014 911 Carrera. At the time of purchase, Plaintiff did not know that the Class
8 Vehicle was designed to deceive regulators and the public, that its advertised fuel economy was
9 fraudulent and overstated, and that it emitted more pollutants than represented and potentially
10 allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle than he
11 would have had it achieved the represented fuel economy, and has been inconvenienced by having
12 to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and proximate
13 result of Defendants’ misconduct.

14 12. Plaintiff **Frank Belle** (for the purpose of this paragraph “Plaintiff”), a citizen of
15 Alabama, residing in Pleasant Grove, Alabama, purchased a used 2010 Porsche Panamera (for the
16 purpose of this paragraph, the “Class Vehicle”) on or around November 24, 2015 from CarMax in
17 Hoover, Alabama. The Class Vehicle is equipped with Sport Plus mode. Plaintiff decided to
18 purchase the Class Vehicle based in part on Porsche’s representations regarding the vehicle’s fuel
19 economy, emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff reviewed
20 Porsche’s website, vehicle brochure, and online media regarding the Class Vehicle. At the time of
21 purchase, Plaintiff did not know that the Class Vehicle was designed to deceive regulators and the
22 public, that its advertised fuel economy was fraudulent and overstated, and that it emitted more
23 pollutants than represented and potentially allowed by law. Plaintiff has also paid more for fuel
24 during his possession of the vehicle than he would have had it achieved the represented fuel
25 economy, and has been inconvenienced by having to refill the fuel tank more often. Plaintiff has
26 suffered a concrete injury as a direct and proximate result of Defendants’ misconduct.

27 13. Plaintiff **Erik Bloom** (for the purpose of this paragraph, “Plaintiff”), a citizen of
28 Georgia, residing in Cumming, Georgia, purchased a used 2012 Porsche 911 Carrera (for the

1 purpose of this paragraph, the “Class Vehicle”) on or around June 1, 2020, from AutoXperts Inc. in
2 Marietta, Georgia. Plaintiff decided to purchase the Class Vehicle based in part on Porsche’s
3 representations regarding the vehicle’s fuel economy, emissions, and/or performance. Prior to
4 purchasing the Class Vehicle, Plaintiff researched the vehicle’s fuel economy and reviewed the
5 Monroney Label. At the time of purchase, Plaintiff did not know that the Class Vehicle was
6 designed to deceive regulators and the public, that its advertised fuel economy was fraudulent and
7 overstated, and that it emitted more pollutants than represented and potentially allowed by law.
8 Plaintiff has also paid more for fuel during his possession of the vehicle than he would have had it
9 achieved the represented fuel economy, and has been inconvenienced by having to refill the fuel
10 tank more often. Plaintiff has suffered a concrete injury as a direct and proximate result of
11 Defendants’ misconduct.

12 14. Plaintiff **Ashish Chadha** (for the purpose of this paragraph, “Plaintiff”), a citizen of
13 California, residing in Oakland, California, purchased a certified pre-owned 2012 Porsche 911
14 Carrera (for the purpose of this paragraph, the “Class Vehicle”) on or around January 20, 2018 from
15 Porsche Atlanta Perimeter, an authorized Porsche dealer in Atlanta, Georgia. Plaintiff decided to
16 purchase the Class Vehicle based in part on Porsche’s representations regarding the vehicle’s fuel
17 economy, emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff
18 conducted research, including by, among other things, reading Motor Trend and Car and Driver
19 articles; watching the Motor Week television show; reviewing the Class Vehicle’s window sticker
20 on the dealership website and at the dealership when he inspected the car and reviewed all
21 documentation; reviewing the brochure/booklet (for the 911.2 model—which was the closest
22 brochure available at the dealership). Plaintiff specifically recalls seeing before his purchase that
23 the Class Vehicle had an estimated fuel economy of 20 MPG, which was the bar that he wouldn’t
24 go under when buying a sports car. He also recalls hearing continuously that Porsche was moving
25 towards electric/hybrid and was committed to fuel efficiency, including them touting reduced CO₂.
26 At the time of purchase, Plaintiff did not know that the Class Vehicle was designed to deceive
27 regulators and the public, that its advertised fuel economy was fraudulent and overstated, and that it
28 emitted more pollutants than represented and potentially allowed by law. Plaintiff has also paid

1 more for fuel during his possession of the vehicle than he would have had it achieved the
2 represented fuel economy, and has been inconvenienced by having to refill the fuel tank more
3 often. Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants'
4 misconduct.

5 15. Plaintiff **Frank Cohen** (for the purpose of this paragraph, "Plaintiff"), a citizen of
6 New York, residing in Melville, New York, purchased a used 2009 Porsche 911 (for the purpose of
7 this paragraph, the "Class Vehicle") in or around January 2020, from a private sale in Easton,
8 Connecticut. Plaintiff decided to purchase the Class Vehicle based in part on Porsche's
9 representations regarding the vehicle's fuel economy, emissions, and/or performance. Prior to
10 purchasing the Class Vehicle, Plaintiff reviewed Porsche's website and also researched the
11 specifications and features of the vehicle. At the time of purchase, Plaintiff did not know that the
12 Class Vehicle was designed to deceive regulators and the public, that its advertised fuel economy
13 was fraudulent and overstated, and that it emitted more pollutants than represented and potentially
14 allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle than he
15 would have had it achieved the represented fuel economy, and has been inconvenienced by having
16 to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and proximate
17 result of Defendants' misconduct.

18 16. Plaintiff **Rafael Daniels** (for the purpose of this paragraph, "Plaintiff"), a citizen of
19 Texas, residing in Sugar Land, Texas, purchased a used 2015 Porsche 911 Targa 4S (for the
20 purpose of this paragraph, the "Class Vehicle") in or around June 2017, from Braman Motorcars in
21 West Palm Beach, Florida. The Class Vehicle is equipped with Sport Plus mode. Plaintiff decided
22 to purchase the Class Vehicle based in part on Porsche's representations regarding the vehicle's
23 fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff
24 researched the vehicle's specifications by reviewing the Porsche website and the vehicle's
25 Monroney label. At the time of purchase, Plaintiff did not know that the Class Vehicle was
26 designed to deceive regulators and the public, that its advertised fuel economy was fraudulent and
27 overstated, and that it emitted more pollutants than represented and potentially allowed by law.
28 Plaintiff has also paid more for fuel during his possession of the vehicle than he would have had it

1 achieved the represented fuel economy, and has been inconvenienced by having to refill the fuel
2 tank more often. Plaintiff has suffered a concrete injury as a direct and proximate result of
3 Defendants' misconduct.

4 17. Plaintiff **Ernesto Del Barrio Jr.** (for the purpose of this paragraph, "Plaintiff"), a
5 citizen of California, residing in San Francisco, California, purchased a used 2012 Porsche 911
6 Carrera, (for the purpose of this paragraph, the "Class Vehicle") on or around April 2, 2016 from a
7 private sale in San Rafael, California. Plaintiff decided to purchase the Class Vehicle based in part
8 on Porsche's representations regarding the vehicle's fuel economy, emissions, and/or performance.
9 Prior to purchasing the Class Vehicle, Plaintiff reviewed information provided by Porsche in press
10 releases and through the automotive press. At the time of purchase, Plaintiff did not know that the
11 Class Vehicle was designed to deceive regulators and the public, that its advertised fuel economy
12 was fraudulent and overstated, and that it emitted more pollutants than represented and potentially
13 allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle than he
14 would have had it achieved the represented fuel economy, and has been inconvenienced by having
15 to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and proximate
16 result of Defendants' misconduct.

17 18. Plaintiff **Alan Essreg** (for the purpose of this paragraph, "Plaintiff"), a citizen of
18 Florida, residing in North Fort Meyers, Florida, purchased a used 2015 Porsche 911 Turbo S (for
19 the purpose of this paragraph, the "Class Vehicle") on or around January 1, 2018, from Exclusive
20 Auto in Pelham, Alabama. The Class Vehicle is equipped with Sport Plus mode. Plaintiff decided
21 to purchase the Class Vehicle based in part on Porsche's representations regarding the vehicle's
22 fuel economy, emissions, and/or performance. At the time of purchase, Plaintiff did not know that
23 the Class Vehicle was designed to deceive regulators and the public, that its advertised fuel
24 economy was fraudulent and overstated, and that it emitted more pollutants than represented and
25 potentially allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle
26 than he would have had it achieved the represented fuel economy, and has been inconvenienced by
27 having to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and
28 proximate result of Defendants' misconduct.

1 19. Plaintiff **Jeffery Henderson** (for the purpose of this paragraph, “Plaintiff”), a
2 citizen of Louisiana, residing in Harvey, Louisiana, purchased a used 2011 Porsche Panamera 4S
3 (for the purpose of this paragraph, the “Class Vehicle”) on or around August 2016 from Bryan
4 Chevrolet in Metairie, Louisiana. Plaintiff decided to purchase the Class Vehicle based in part on
5 Porsche’s representations regarding fuel economy, emissions, and/or performance. Prior to
6 purchasing the Class Vehicle, Plaintiff reviewed Porsche’s website and online media regarding the
7 Class Vehicle. At the time of purchase, Plaintiff did not know that the Class Vehicle was designed
8 to deceive regulators and the public, that its advertised fuel economy was fraudulent and overstated,
9 and that it emitted more pollutants than represented and potentially allowed by law. Plaintiff has
10 also paid more for fuel during his possession of the vehicle than he would have had it achieved the
11 represented fuel economy, and has been inconvenienced by having to refill the fuel tank more
12 often. Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants’
13 misconduct.

14 20. Plaintiff **Dr. Isaías Iñiguez** (for the purpose of this paragraph, “Plaintiff”), a citizen
15 of Arizona, residing in Yuma, Arizona, purchased a used 2015 Porsche Boxster (for the purpose of
16 this paragraph, the “Class Vehicle”) on or around February 16, 2020, from Luxury Preowned
17 Motor Cars in Bellflower, California. The Class Vehicle is equipped with Sport Plus mode.
18 Plaintiff decided to purchase the Class Vehicle based in part on Porsche’s representations regarding
19 the vehicle’s fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle,
20 Plaintiff reviewed various online publications and reviews. At the time of purchase, Plaintiff did
21 not know that the Class Vehicle was designed to deceive regulators and the public, that its
22 advertised fuel economy was fraudulent and overstated, and that it emitted more pollutants than
23 represented and potentially allowed by law. Plaintiff has also paid more for fuel during his
24 possession of the vehicle than he would have had it achieved the represented fuel economy, and has
25 been inconvenienced by having to refill the fuel tank more often. Plaintiff has suffered a concrete
26 injury as a direct and proximate result of Defendants’ misconduct.

27 21. Plaintiff **Frederick Jeng** (for the purpose of this paragraph, “Plaintiff”), a citizen of
28 California, residing in Torrance, California, purchased a certified pre-owned 2010 Porsche Cayman

1 (for the purpose of this paragraph, the “Class Vehicle”) on or around March 20, 2014, from Rusnak
2 Westlake Porsche, an authorized Porsche dealer in Thousand Oaks, California. Plaintiff decided to
3 purchase the Class Vehicle based in part on Porsche’s representations regarding the vehicle’s fuel
4 economy, emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff reviewed
5 Porsche’s social media accounts, Porsche’s CPO program and local inventory, and various online
6 videos and reviews. At the time of purchase, Plaintiff did not know that the Class Vehicle was
7 designed to deceive regulators and the public, that its advertised fuel economy was fraudulent and
8 overstated, and that it emitted more pollutants than represented and potentially allowed by law.
9 Plaintiff has also paid more for fuel during his possession of the vehicle than he would have had it
10 achieved the represented fuel economy, and has been inconvenienced by having to refill the fuel
11 tank more often. Plaintiff has suffered a concrete injury as a direct and proximate result of
12 Defendants’ misconduct.

13 22. Plaintiff **Andrew Kavan** (for the purpose of this paragraph, “Plaintiff”), a citizen of
14 Nebraska, residing in Omaha, Nebraska, purchased a used 2011 Porsche Panamera (for the purpose
15 of this paragraph, the “Class Vehicle”) on or around August 21, 2020, from a private sale in St.
16 George, Utah. The Class Vehicle is equipped with Sport Plus mode. Plaintiff decided to purchase
17 the Class Vehicle based in part on Porsche’s representations regarding the vehicle’s fuel economy,
18 emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff reviewed Porsche’s
19 website and also researched the specifications, features, and fuel economy rating for the vehicle. At
20 the time of purchase, Plaintiff did not know that the Class Vehicle was designed to deceive
21 regulators and the public, that its advertised fuel economy was fraudulent and overstated, and that it
22 emitted more pollutants than represented and potentially allowed by law. Plaintiff has also paid
23 more for fuel during his possession of the vehicle than he would have had it achieved the
24 represented fuel economy, and has been inconvenienced by having to refill the fuel tank more
25 often. Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants’
26 misconduct.

27 23. Plaintiff **Saul Luvic** (for the purpose of this paragraph “Plaintiff”), a citizen of
28 Pennsylvania, residing in Lancaster, Pennsylvania, purchased a used 2011 Porsche Panamera Sport

1 (for the purpose of this paragraph, the “Class Vehicle”) on or around February 2020 from Cam
2 Automotive in Lancaster, Pennsylvania. The Class Vehicle was equipped with Sport Plus mode.
3 Plaintiff decided to purchase the Class Vehicle based in part on Porsche’s representations regarding
4 the vehicle’s fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle,
5 Plaintiff reviewed Porsche’s website and online media. At the time of purchase, Plaintiff did not
6 know that the Class Vehicle was designed to deceive regulators and the public, that its advertised
7 fuel economy was fraudulent and overstated, and that it emitted more pollutants than represented
8 and potentially allowed by law. Plaintiff has also paid more for fuel during his possession of the
9 vehicle than he would have had it achieved the represented fuel economy, and has been
10 inconvenienced by having to refill the fuel tank more often. Plaintiff has suffered a concrete injury
11 as a direct and proximate result of Defendants’ misconduct.

12 24. Plaintiff **Lee Marks** (for the purpose of this paragraph, “Plaintiff”), a citizen of
13 Georgia, residing in Woodstock, Georgia, purchased a used 2015 Porsche Boxster S (for the
14 purpose of this paragraph, the “Class Vehicle”) on or around April 1, 2020, from Napleton Auto
15 Werks in Springfield, Missouri. Plaintiff decided to purchase the Class Vehicle based in part on
16 Porsche’s representations regarding the vehicle’s fuel economy, emissions, and/or performance.
17 Prior to purchasing the Class Vehicle, Plaintiff researched the vehicle’s fuel economy and
18 emissions rating. At the time of purchase, Plaintiff did not know that the Class Vehicle was
19 designed to deceive regulators and the public, that its advertised fuel economy was fraudulent and
20 overstated, and that it emitted more pollutants than represented and potentially allowed by law.
21 Plaintiff has also paid more for fuel during his possession of the vehicle than he would have had it
22 achieved the represented fuel economy, and has been inconvenienced by having to refill the fuel
23 tank more often. Plaintiff has suffered a concrete injury as a direct and proximate result of
24 Defendants’ misconduct.

25 25. Plaintiff **Jino Masone** (for the purpose of this paragraph, “Plaintiff”), a citizen of
26 Maryland, residing in Severna Park, Maryland, purchased a certified pre-owned 2015 Porsche 911
27 Carrera (for the purpose of this paragraph, the “Class Vehicle”) on or around April 8, 2017, from
28 Porsche Conshohocken, an authorized Porsche dealer in Conshohocken, Pennsylvania. Plaintiff

1 decided to purchase the Class Vehicle based in part on Porsche's representations regarding the
2 vehicle's fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle,
3 Plaintiff researched the vehicle online and reviewed Porsche's website. At the time of purchase,
4 Plaintiff did not know that the Class Vehicle was designed to deceive regulators and the public, that
5 its advertised fuel economy was fraudulent and overstated, and that it emitted more pollutants than
6 represented and potentially allowed by law. Plaintiff has also paid more for fuel during his
7 possession of the vehicle than he would have had it achieved the represented fuel economy, and has
8 been inconvenienced by having to refill the fuel tank more often. Plaintiff has suffered a concrete
9 injury as a direct and proximate result of Defendants' misconduct.

10 26. Plaintiff **Robbie McCarthy** (for the purpose of this paragraph, "Plaintiff"), a citizen
11 of Pennsylvania, residing in Ardmore, Pennsylvania, purchased a 2013 Porsche 911 Carrera S (for
12 the purpose of this paragraph, the "Class Vehicle") on or around June 1, 2018, from Paul Sevag
13 Motors in West Chester, Pennsylvania. The Class Vehicle was equipped with Sport Plus mode.
14 Plaintiff decided to purchase the Class Vehicle based in part on Porsche's representations regarding
15 the vehicle's fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle,
16 Plaintiff researched the vehicle online. At the time of purchase, Plaintiff did not know that the Class
17 Vehicle was designed to deceive regulators and the public, that its advertised fuel economy was
18 fraudulent and overstated, and that it emitted more pollutants than represented and potentially
19 allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle than he
20 would have had it achieved the represented fuel economy, and has been inconvenienced by having
21 to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and proximate
22 result of Defendants' misconduct.

23 27. Plaintiff **Peter Menger** (for the purpose of this paragraph, "Plaintiff"), a citizen of
24 New York, residing in Garden City, New York, leased a 2009 Porsche 911 Carrera S on or around
25 April 30, 2009, from Porsche Gold Coast (formerly known as Porsche Roslyn), an authorized
26 Porsche dealership in Jericho, New York. Plaintiff also leased a 2012 Porsche 911 Carrera S on or
27 around April 14, 2012, from Porsche Gold Coast (formerly known as Porsche Roslyn), an
28 authorized Porsche dealership in Jericho, New York. For the purpose of this paragraph, Plaintiffs'

1 two Porsche vehicles are referred to as the “Class Vehicles.” The Class Vehicles were equipped
2 with Sport Plus mode. Plaintiff decided to lease the Class Vehicles based in part on Porsche’s
3 representations regarding the vehicles’ fuel economy, emissions, and/or performance. Prior to
4 leasing the Class Vehicles, Plaintiff reviewed Porsche’s website, Porsche vehicle building tools,
5 and various automotive publications regarding the Class Vehicles’ specifications and performance.
6 At the time of leasing, Plaintiff did not know that the Class Vehicles were designed to deceive
7 regulators and the public, that their advertised fuel economy was fraudulent and overstated, and that
8 they emitted more pollutants than represented and potentially allowed by law. Plaintiff has also
9 paid more for fuel during his possession of the vehicles than he would have had they achieved the
10 represented fuel economy, and has been inconvenienced by having to refill the fuel tanks more
11 often. Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants’
12 misconduct.

13 28. Plaintiff **Philipp Novales-Li** (for the purpose of this paragraph, “Plaintiff”), a
14 citizen of California, residing in Livermore, California, purchased a certified pre-owned 2016
15 Porsche 911 GT3 RS (for the purpose of this paragraph, the “Class Vehicle”) on or around April 14,
16 2019, from Jackie Cooper Imports of Tulsa (also known as Porsche of Tulsa), an authorized
17 Porsche dealer in Tulsa, Oklahoma. Plaintiff decided to purchase the Class Vehicle based in part on
18 Porsche’s representations regarding the vehicle’s fuel economy, emissions, and/or performance.
19 Prior to purchasing the Class Vehicle, Plaintiff reviewed Porsche’s website, vehicle brochure, and
20 online media regarding the Class Vehicle. Plaintiff also spoke with his local Porsche dealership
21 about the technical features of the vehicle and attended a Porsche launch event that touted the
22 technical and performance specifications of the Porsche 911. At the time of purchase, Plaintiff did
23 not know that the Class Vehicle was designed to deceive regulators and the public, that its
24 advertised fuel economy was fraudulent and overstated, and that it emitted more pollutants than
25 represented and potentially allowed by law. Plaintiff has also paid more for fuel during his
26 possession of the vehicle than he would have had it achieved the represented fuel economy, and has
27 been inconvenienced by having to refill the fuel tank more often. Plaintiff has suffered a concrete
28 injury as a direct and proximate result of Defendants’ misconduct.

1 29. Plaintiff **George Pearl** (for the purpose of this paragraph, “Plaintiff”), a citizen of
2 Georgia, residing in Decatur, Georgia, purchased a new 2013 Porsche Boxster (for the purpose of
3 this paragraph, the “Class Vehicle”) on or around December 31, 2013, from Porsche Atlanta
4 Perimeter, an authorized Porsche dealership in Atlanta, Georgia. Plaintiff decided to purchase the
5 Class Vehicle based in part on Porsche’s representations regarding the vehicle’s fuel economy,
6 emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff researched the
7 vehicle’s specifications and reviewed the Porsche website and vehicle brochures. At the time of
8 purchase, Plaintiff did not know that the Class Vehicle was designed to deceive regulators and the
9 public, that its advertised fuel economy was fraudulent and overstated, and that it emitted more
10 pollutants than represented and potentially allowed by law. Plaintiff has also paid more for fuel
11 during his possession of the vehicle than he would have had it achieved the represented fuel
12 economy, and has been inconvenienced by having to refill the fuel tank more often. Plaintiff has
13 suffered a concrete injury as a direct and proximate result of Defendants’ misconduct.

14 30. Plaintiff **David Perkins III** (for the purpose of this paragraph, “Plaintiff”), a citizen
15 of Illinois, residing in Chicago, Illinois, purchased a used 2009 Porsche 911 Carrera 4S (for the
16 purpose of this paragraph, the “Class Vehicle”) on or around October 9, 2020, from Johnson Honda
17 of Stuart in Stuart, Florida. The Class Vehicle is equipped with Sport Plus mode. Plaintiff decided
18 to purchase the Class Vehicle based in part on Porsche’s representations regarding the vehicle’s
19 fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff
20 researched the vehicle’s specifications online and reviewed Porsche’s website. At the time of
21 purchase, Plaintiff did not know that the Class Vehicle was designed to deceive regulators and the
22 public, that its advertised fuel economy was fraudulent and overstated, and that it emitted more
23 pollutants than represented and potentially allowed by law. Plaintiff has also paid more for fuel
24 during his possession of the vehicle than he would have had it achieved the represented fuel
25 economy, and has been inconvenienced by having to refill the fuel tank more often. Plaintiff has
26 suffered a concrete injury as a direct and proximate result of Defendants’ misconduct.

27 31. Plaintiff **Mauricio Pinto** (for the purpose of this paragraph, “Plaintiff”), a citizen of
28 Texas, residing in Austin, Texas, purchased a certified pre-owned 2013 Porsche 911 Carrera (for

1 the purpose of this paragraph, the “Class Vehicle”) on or around May 12, 2015, from Porsche of
2 San Antonio, an authorized Porsche dealership in San Antonio, Texas. The Class Vehicle is
3 equipped with Sport Plus mode. Plaintiff decided to purchase the Class Vehicle based in part on
4 Porsche’s representations regarding the vehicle’s fuel economy, emissions, and/or performance.
5 Prior to purchasing the Class Vehicle, Plaintiff reviewed Porsche’s website and researched
6 information about the performance, emissions rating, and fuel economy of the Class Vehicle.
7 Plaintiff also spoke with the Porsche dealership about the Class Vehicle’s specifications and
8 reviewed the vehicle’s Monroney label and Porsche’s vehicle brochure. At the time of purchase,
9 Plaintiff did not know that the Class Vehicle was designed to deceive regulators and the public, that
10 its advertised fuel economy was fraudulent and overstated, and that it emitted more pollutants than
11 represented and potentially allowed by law. Plaintiff has also paid more for fuel during his
12 possession of the vehicle than he would have had it achieved the represented fuel economy, and has
13 been inconvenienced by having to refill the fuel tank more often. Plaintiff has suffered a concrete
14 injury as a direct and proximate result of Defendants’ misconduct.

15 32. Plaintiff **Cecil Robinson** (for the purpose of this paragraph, “Plaintiff”), a citizen of
16 Colorado, residing in Grand Junction, Colorado, purchased a certified pre-owned 2009 Porsche 911
17 (for the purpose of this paragraph, the “Class Vehicle”) on or around December 12, 2015, from
18 Porsche Atlanta Perimeter (part of the Jim Ellis Automotive Group), an authorized Porsche dealer
19 in Atlanta, Georgia. Plaintiff decided to purchase the Class Vehicle based in part on Porsche’s
20 representations regarding the vehicle’s fuel economy, emissions, and/or performance. Prior to
21 purchasing the Class Vehicle, Plaintiff researched the vehicle’s specifications and features and also
22 spoke with the Porsche dealership about the vehicle. At the time of purchase, Plaintiff did not know
23 that the Class Vehicle was designed to deceive regulators and the public, that its advertised fuel
24 economy was fraudulent and overstated, and that it emitted more pollutants than represented and
25 potentially allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle
26 than he would have had it achieved the represented fuel economy, and has been inconvenienced by
27 having to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and
28 proximate result of Defendants’ misconduct.

1 33. Plaintiff **Richard Schubert** (for the purpose of this paragraph, “Plaintiff”), a citizen
2 of California, residing in Winters, California, purchased a new 2012 Panamera 4 (for the purpose of
3 this paragraph, the “Class Vehicle”) in or around October 2011 from Porsche Rocklin, an
4 authorized Porsche dealership in Rocklin, California. The Class Vehicle is equipped with Sport
5 Plus mode. Plaintiff decided to purchase the Class Vehicle based in part on Porsche’s
6 representations regarding the vehicle’s fuel economy, emissions, and/or performance. Prior to
7 purchasing the Class Vehicle, Plaintiff reviewed Porsche’s advertisements and marketing
8 materials, including content on Porsche’s website and in promotional brochures. Plaintiff also
9 reviewed the vehicle’s Monroney label. At the time of purchase, Plaintiff did not know that the
10 Class Vehicle was designed to deceive regulators and the public, that its advertised fuel economy
11 was fraudulent and overstated, and that it emitted more pollutants than represented and potentially
12 allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle than he
13 would have had it achieved the represented fuel economy, and has been inconvenienced by having
14 to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and proximate
15 result of Defendants’ misconduct.

16 34. Plaintiff **Luigi Sciabarrasi** (for the purpose of this paragraph, “Plaintiff”), a citizen
17 of California, residing in Agoura Hills, California, purchased a new 2011 Porsche Panamera (for
18 the purpose of this paragraph, the “Class Vehicle”) in or around June 2011 from Porsche Redwood
19 City, an authorized Porsche dealership in Redwood City, California. Plaintiff decided to purchase
20 the class vehicle based in part on Porsche’s representations regarding the vehicle’s fuel economy,
21 emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff reviewed Porsche’s
22 website, vehicle brochure, and online media regarding the Class Vehicle, and also reviewed
23 representations on the vehicle’s Monroney sticker. At the time of purchase, Plaintiff did not know
24 that the Class Vehicle was designed to deceive regulators and the public, that its advertised fuel
25 economy was fraudulent and overstated, and that it emitted more pollutants than represented and
26 potentially allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle
27 than he would have had it achieved the represented fuel economy, and has been inconvenienced by
28

1 having to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and
2 proximate result of Defendants' misconduct.

3 35. Plaintiff **Sander Shady** (for the purpose of this paragraph, "Plaintiff"), a citizen of
4 Florida, residing in Estero, Florida, purchased a certified pre-owned 2013 Porsche 911 in or around
5 June 2016, from Cherry Hill Porsche, an authorized Porsche dealership in Cherry Hill, New Jersey.
6 Plaintiff also purchased a used 2013 Porsche Cayenne in or around April 2017 from
7 Mercedes-Benz of Bonita Springs in Naples, Florida. For the purpose of this paragraph, Plaintiffs'
8 two Porsche vehicles are referred to as the "Class Vehicles." The Class Vehicles are equipped with
9 Sport Plus mode. Plaintiff decided to purchase the Class Vehicles based in part on Porsche's
10 representations regarding the vehicles' fuel economy, emissions, and/or performance. Prior to
11 purchasing the Class Vehicles, Plaintiff reviewed Porsche's vehicle brochures and advertisements
12 to research the vehicles. Plaintiff also spoke with his local Porsche dealerships about the
13 specifications and features of the Class Vehicles, and he inquired with the dealership service
14 departments about any issues or pending recalls for the vehicles. At the time of purchase, Plaintiff
15 did not know that the Class Vehicles were designed to deceive regulators and the public, that their
16 advertised fuel economy was fraudulent and overstated, and that they emitted more pollutants than
17 represented and potentially allowed by law. Plaintiff has also paid more for fuel during his
18 possession of the vehicles than he would have had they achieved the represented fuel economy, and
19 has been inconvenienced by having to refill the fuel tanks more often. Plaintiff has suffered a
20 concrete injury as a direct and proximate result of Defendants' misconduct.

21 36. Plaintiff **Oscar Sotelo II** (for the purpose of this paragraph, "Plaintiff"), a citizen of
22 Texas, residing in Dallas, Texas, purchased a used 2013 Porsche Panamera Platinum (for the
23 purpose of this paragraph, the "Class Vehicle") on or around January 1, 2020, from Earth Motor
24 Cars in Carrollton, Texas. Plaintiff decided to purchase the Class Vehicle based in part on
25 Porsche's representations regarding the vehicle's fuel economy, emissions, and/or performance.
26 Prior to purchasing the Class Vehicle, Plaintiff researched the vehicle's performance, emissions
27 rating, and fuel economy, and also reviewed Porsche's website and information about the
28 performance of the Class Vehicle. At the time of purchase, Plaintiff did not know that the Class

1 Vehicle was designed to deceive regulators and the public, that its advertised fuel economy was
2 fraudulent and overstated, and that it emitted more pollutants than represented and potentially
3 allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle than he
4 would have had it achieved the represented fuel economy, and has been inconvenienced by having
5 to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and proximate
6 result of Defendants' misconduct.

7 37. Plaintiff **Dyana Spiess** (for the purpose of this paragraph, "Plaintiff"), a citizen of
8 Florida, residing in Belleair, Florida, purchased a used 2013 Porsche Boxster (for the purpose of
9 this paragraph, the "Class Vehicle") on or around January 1, 2015, from a private sale in Charlotte,
10 North Carolina. Plaintiff decided to purchase the Class Vehicle based in part on Porsche's
11 representations regarding the vehicle's fuel economy, emissions, and/or performance. Prior to
12 purchasing the Class Vehicle, Plaintiff researched the Class Vehicle's estimated fuel economy. At
13 the time of purchase, Plaintiff did not know that the Class Vehicle was designed to deceive
14 regulators and the public, that its advertised fuel economy was fraudulent and overstated, and that it
15 emitted more pollutants than represented and potentially allowed by law. Plaintiff has also paid
16 more for fuel during her possession of the vehicle than she would have had it achieved the
17 represented fuel economy, and has been inconvenienced by having to refill the fuel tank more
18 often. Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants'
19 misconduct.

20 38. Plaintiff **Orville Taylor** (for the purpose of this paragraph, "Plaintiff"), a citizen of
21 Florida, residing in Tallahassee, Florida, purchased a certified pre-owned 2012 Porsche 911
22 Carrera S (for the purpose of this paragraph, the "Class Vehicle") on or around July 13, 2017, from
23 Roslyn Porsche, an authorized Porsche dealership in New York (now known as Porsche Gold
24 Coast). The vehicle is equipped with Sport Plus mode. Plaintiff decided to purchase the Class
25 Vehicle based in part on Porsche's representations regarding the vehicle's fuel economy,
26 emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff reviewed Porsche's
27 website and researched the vehicle's specifications and fuel economy. At the time of purchase,
28 Plaintiff did not know that the Class Vehicle was designed to deceive regulators and the public, that

1 its advertised fuel economy was fraudulent and overstated, and that it emitted more pollutants than
2 represented and potentially allowed by law. Plaintiff has also paid more for fuel during his
3 possession of the vehicle than he would have had it achieved the represented fuel economy, and has
4 been inconvenienced by having to refill the fuel tank more often. Plaintiff has suffered a concrete
5 injury as a direct and proximate result of Defendants' misconduct.

6 39. Plaintiff **Lawrence Tougas** (for the purpose of this paragraph, "Plaintiff"), a citizen
7 of California, residing in Fairfield, California, purchased a certified pre-owned 2017 Porsche 911
8 Carrera (for the purpose of this paragraph, the "Class Vehicle") on or around September 22, 2020,
9 from Porsche Fremont, an authorized Porsche dealership in Fremont, California. Plaintiff decided
10 to purchase the Class Vehicle based in part on Porsche's representations regarding the vehicle's
11 fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle, Plaintiff
12 researched the vehicle by reviewing Porsche's website as well as the Class Vehicle's build sheet
13 and vehicle maintenance records. Plaintiff also discussed the features of the Class Vehicle with the
14 Porsche dealership. At the time of purchase, Plaintiff did not know that the Class Vehicle was
15 designed to deceive regulators and the public, that its advertised fuel economy was fraudulent and
16 overstated, and that it emitted more pollutants than represented and potentially allowed by law.
17 Plaintiff has also paid more for fuel during his possession of the vehicle than he would have had it
18 achieved the represented fuel economy, and has been inconvenienced by having to refill the fuel
19 tank more often. Plaintiff has suffered a concrete injury as a direct and proximate result of
20 Defendants' misconduct.

21 40. Plaintiff **John Vorisek** (for the purpose of this paragraph, "Plaintiff"), a citizen of
22 North Carolina, residing in Wilmington, North Carolina, purchased a certified pre-owned 2017
23 Porsche 911 (for the purpose of this paragraph, the "Class Vehicle") in or around October 2018,
24 from Porsche Wilmington, an authorized Porsche dealership in Wilmington, North Carolina.
25 Plaintiff decided to purchase the Class Vehicle based in part on Porsche's representations regarding
26 the vehicle's fuel economy, emissions, and/or performance. Prior to purchasing the Class Vehicle,
27 Plaintiff spoke with the Porsche dealership about the features and specifications of the vehicle and
28 also reviewed the vehicle's window sticker. At the time of purchase, Plaintiff did not know that the

1 Class Vehicle was designed to deceive regulators and the public, that its advertised fuel economy
2 was fraudulent and overstated, and that it emitted more pollutants than represented and potentially
3 allowed by law. Plaintiff has also paid more for fuel during his possession of the vehicle than he
4 would have had it achieved the represented fuel economy, and has been inconvenienced by having
5 to refill the fuel tank more often. Plaintiff has suffered a concrete injury as a direct and proximate
6 result of Defendants' misconduct.

7 41. Plaintiff **Owen Williams** (for the purpose of this paragraph, "Plaintiff"), a citizen of
8 New Jersey, residing in Branchburg, New Jersey, leased a new 2015 Porsche 911 Carrera S (for the
9 purpose of this paragraph, the "Class Vehicle") in or around November 2014 from Princeton
10 Porsche, an authorized Porsche dealership in Lawrence Township, New Jersey. The Class Vehicle
11 was equipped with Sport Plus mode. Plaintiff decided to lease the Class Vehicle based in part on
12 Porsche's representations regarding the vehicle's fuel economy, emissions, and/or performance.
13 Prior to leasing the Class Vehicle, Plaintiff researched the vehicle's specifications and features on
14 the Porsche website using the vehicle configuration tool and also spoke with the Porsche dealership
15 about the vehicle. At the time of leasing, Plaintiff did not know that the Class Vehicle was designed
16 to deceive regulators and the public, that its advertised fuel economy was fraudulent and overstated,
17 and that it emitted more pollutants than represented and potentially allowed by law. Plaintiff has
18 also paid more for fuel during his possession of the vehicle than he would have had it achieved the
19 represented fuel economy, and has been inconvenienced by having to refill the fuel tank more
20 often. Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants'
21 misconduct.

22 **B. Defendants**

23 42. **Dr. Ing. h.c. F. Porsche AG** ("Porsche AG") is a German corporation with its
24 principal place of business located in Stuttgart, Germany. Porsche AG designs, develops,
25 manufacturers, and sells luxury automobiles. Porsche AG is a wholly-owned subsidiary of VW
26 AG. With the assistance of Volkswagen AG, Porsche AG engineered, designed, developed,
27 manufactured and exported these vehicles with the knowledge and understanding that they would
28 be sold throughout the United States. On information and belief, Porsche AG also reviewed and

1 approved the marketing and advertising campaigns designed to sell the Porsche-branded Class
2 Vehicles.

3 43. **Porsche Cars North America, Inc.** (“Porsche America”) is a Delaware
4 corporation with its principal place of business located at 1 Porsche Drive, Atlanta, Georgia 30354.
5 Porsche America is a wholly-owned U.S. subsidiary of Porsche AG, and it engages in business,
6 including the advertising, marketing, and sale of Porsche automobiles, in all 50 states.

7 44. **Volkswagen AG** (“VW AG”) is a German corporation with its principal place of
8 business in Wolfsburg, Germany. VW AG is one of the largest automobile manufacturers in the
9 world, and is in the business of designing, developing, manufacturing, and selling automobiles.
10 VW AG is the parent corporation of Porsche AG. At all times relevant to this action, Volkswagen
11 manufactured, distributed, sold, leased, and warranted the Class Vehicles under the Porsche brand
12 names throughout the United States. Upon information and belief, VW AG reviewed and approved
13 Porsche’s vehicle designs, testing strategies, and marketing materials relating to the Class Vehicles.

14 **IV. JURISDICTION AND VENUE**

15 45. This Consolidated Class Action Complaint is filed as an original action in this
16 District and as the consolidated complaint in the Porsche Gasoline Litigation within MDL No.
17 2672, pursuant to Dkt. No. 7756.

18 46. This Court has jurisdiction over this action pursuant to the Class Action Fairness
19 Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship
20 from one Defendant, there are more than 100 Class members, and the aggregate amount in
21 controversy exceeds \$5 million, exclusive of interest and costs. The Court also has supplemental
22 jurisdiction over the claim brought under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et*
23 *seq.*, because that claim arises from the same controversy as the state law claims over which this
24 court has jurisdiction under CAFA. The Court has personal jurisdiction over Defendants pursuant
25 to 18 U.S.C. §§ 1965(b) and (d), and Cal. Code Civ. P. § 410.10.

26 47. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part
27 of the events and/or omissions giving rise to the claims occurred in this District, and because
28 Defendants have caused harm to Class members residing in this District, including Plaintiffs

1 Mallen Fajardo, Ashish Chadha, Ernesto Del Barrio, and Philipp Novales-Li. Defendants have
2 marketed, advertised, sold and leased the Class Vehicles from dealers located in this District.

3 **V. INTRADISTRICT ASSIGNMENT AND RELATED CASE**

4 48. This action is properly assigned to the San Francisco Division of this District
5 pursuant to N.D. Cal. L.R. 3-2, because a substantial part of the events or omissions giving rise to
6 Plaintiffs' claims arose in the counties served by the San Francisco Division. Moreover,
7 Defendants conduct substantial business in the counties served by this Division, have marketed,
8 advertised, sold, and leased the Class Vehicles in those counties, and have caused harm to Class
9 members residing in those counties, including Mallen Fajardo who resides in San Bruno County,
10 Ashish Chadha who resides in Alameda County, Ernest Del Barrio who resides in San Francisco
11 County, and Philipp Novales-Li who resides in Alameda County.

12 49. Finally, this Consolidated Class Action Complaint serves both as an original
13 complaint in this District as well as the consolidated complaint for the Porsche Gasoline Litigation
14 in MDL No. 2672 proceedings, which have been consolidated before Judge Charles R. Breyer,
15 presiding in the San Francisco Division of this District. As noted above and described further
16 herein, the fraud alleged here involves many of the same players, implementing similar schemes,
17 with nearly identical objectives, as the "Clean Diesel" scandal.

18 **VI. FACTS COMMON TO ALL COUNTS**

19 **A. Porsche and its parent and sister companies have a long history of cheating on**
20 **emissions and fuel economy.**

21 50. In the fall of 2015, the public learned that over the course of six years Volkswagen,
22 Audi, and Porsche had deliberately used defeat devices—software designed to cheat emissions
23 tests and deceive federal and state regulators—in nearly 600,000 so-called "clean" diesel vehicles
24 sold in the United States. Unbeknownst to consumers and regulatory authorities, Volkswagen,
25 Audi, and Porsche installed a software defeat device that allowed their diesel vehicles to evade
26 United States Environmental Protection Agency ("EPA") and California Air Resources Board
27 ("CARB") emissions test procedures.
28

1 51. During emissions testing, the defeat device produced regulation-compliant results.
2 When the vehicles were driven on the road, however, the defeat device reduced the effectiveness of
3 the vehicles' emissions control system and caused the vehicles to emit noxious pollutants like
4 oxides of nitrogen ("NOx") at up to 40 times the legal limit. Only by installing the defeat device on
5 their vehicles were Volkswagen, Audi, and Porsche able to deceive the public and obtain
6 permission from EPA and CARB to sell the vehicles. That case was litigated, and ultimately
7 settled, under this Court's guidance in a pair of landmark settlements that provided billions of
8 dollars to consumers and environmental mitigation. *See In re: Volkswagen "Clean Diesel" Mktg.,*
9 *Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC) (Dkt. 2102), 2016 WL 6248426
10 (N.D. Cal. Oct. 25, 2016) (2.0L Final Approval Order), *aff'd*, 895 F.3d 597 (9th Cir. 2018); *In re*
11 *Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB
12 (JSC) (Dkt. 3329), 2017 WL 2212783, at *2 (N.D. Cal. May 17, 2017) (3.0L Final Approval
13 Order). VW AG and certain of its executives pleaded guilty to a federal criminal indictment in the
14 Eastern District of Michigan, in which they admitted the existence of the defeat device and the
15 conspiracy to defraud federal and state regulators. *U.S. v. Volkswagen AG*, No. 16-CR-20394-SFC,
16 Dkt. No. 68 (E.D. Mich. March 10, 2017).

17 52. The Volkswagen Group's cheating was not limited to diesel vehicles. In late 2015 or
18 early 2016, the German Motor Transportation Authority ("KBA") detected increased CO₂
19 emissions and other irregularities in certain Audi vehicles.³ As it turned out, Volkswagen and its
20 subsidiary companies—including Porsche—had again installed software that caused certain
21 vehicles to perform differently in a testing environment than on the road. The software, called the
22 "Warm-up Program," was calibrated to activate when it encounters certain common "entry
23 conditions" (including key start) and de-activate under certain "exit conditions" (such as steering
24 wheel rotation, longitudinal acceleration, and temperature conditions) which are common in

25 ³ *See, e.g.,* Carsten Rehder, *Examiners Measure Excessive CO₂-Values for Many Car Models*, Bild
26 (November 13, 2016), <http://www.bild.de/geld/aktuelles/wirtschaft/pruefer-messen-bei-vielen-automodellen-ueberhoehte-48744426.bild.html> (German language article); *Ministry of*
27 *Transportation Examines Accusations Against Audi*, Handelsblatt (November 7, 2016),
28 <http://www.handelsblatt.com/politik/deutschland/abgaswertemanipulation-verkehrsministerium-p-rueft-vorwuerfe-gegen-audi/14804236.html> (German language article).

1 real-world driving but typically not satisfied during regulator tests. The result was that, in
2 approximately 100,000 Volkswagen-, Audi-, Bentley-, and Porsche-branded vehicles, the
3 Warm-up Program was active for some or all of standard emissions testing procedures and mostly
4 inactive during on-road driving. This mattered because in “normal” mode—*i.e.*, with Warm-up
5 Program deactivated—the vehicles shift at higher RPMs, emit more carbon dioxide, and use more
6 gas. As with the diesel scandal, under this Court’s guidance, these issues were litigated, and
7 ultimately settled for a non-reversionary \$96.5 million fund that provided full compensation to that
8 class. *See In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL
9 2672 CRB (JSC), Dkt. 7244 (March 2, 2020) (“Audi CO₂” Final Approval Order).

10 53. It is now clear that the Warm-up Program was not the only emissions-manipulation
11 mode affecting Porsche’s gasoline vehicles. As described herein, Porsche has engaged in another
12 illegal scheme dating back to at least 2007 that has misled consumers and regulators about the true
13 emissions and fuel economy of up to 400,000 gasoline vehicles sold in the United States.⁴

14 **B. Defendants deployed an emissions and fuel economy cheating scheme in the**
15 **Class Vehicles.**

16 **1. Defendants knew for years that certain Porsche gasoline vehicles**
17 **contained defeat devices.**

18 54. As with their diesel vehicles, Defendants have for years developed and implemented
19 a secret plan to cheat on emissions tests in certain gasoline vehicles. Upon information and belief,
20 this plan goes back over a decade and was known to the upper echelons of Porsche management for
21 many years.

22 55. Upon information and belief, top management at VW AG also knew about and
23 approved the cheating scheme. When Martin Winterkorn left his position as Audi AG’s CEO to
24 become VW AG’s CEO, he set ambitious sales targets for all of the company’s brands. In the
25 United States, Winterkorn’s goal was to *triple* sales of Volkswagen automobiles—including

26 _____
27 ⁴ *See, e.g.*, Porsche Newsroom US, *Sales Statistics – Porsche Sales in North America*,
28 https://newsroom.porsche.com/en_US/company/porsche-cars-north-america-sales-statistics-18190.html (showing that Porsche sold 477,798 MY 2007-2018 vehicles in the United States, a small percentage of which were diesel vehicles, not implicated by the allegations herein).

1 Volkswagen-, Audi-, and Porsche-branded vehicles—in only ten years.⁵ To meet this ambitious
2 target, VW AG had to increase the sales of its fledgling diesel fleet in the U.S., as well as increase
3 sales of its gas fleet in the United States sold under Volkswagen, Audi, and Porsche brands.

4 56. As is now known, Winterkorn quickly realized his strategy could not succeed
5 without cheating. Winterkorn wanted affordable diesel vehicles and thus—rather than installing the
6 new and expensive diesel emissions technology used by some competitors—sought to develop a
7 cheaper in-house solution. To quickly develop this technology, he tapped Wolfgang Hatz, a former
8 Audi engineer with whom Winterkorn had worked closely when he was Audi’s CEO.⁶ But Hatz
9 could not deliver. Instead, he directly oversaw the installation of emissions-manipulating software
10 that had first been developed at Audi in 1999 when Hatz and Winterkorn both worked at the
11 company.⁷

12 57. Winterkorn and Hatz have both been charged by German authorities for a variety of
13 offenses relating to the diesel scandal.⁸ But Hatz’s role at the company was not limited to solving
14 the clean diesel conundrum for Winterkorn. Hatz was head of engines and transmissions for *all*
15 Volkswagen brands in 2007,⁹ meaning he was in charge of developing the vehicles at issue in the
16 Audi CO₂ litigation, where VW AG installed the Warm-up Program in 100,000 Volkswagen-,
17 Audi-, Bentley-, and Porsche-branded gasoline vehicles.

18 58. Hatz also had a special relationship with Porsche. In 2011, in addition to his role at
19 Volkswagen, he also became head of Porsche’s research and development team and took a seat on
20

21 ⁵ Jack Ewing, *Volkswagen Engine-Rigging Scheme Said to Have Begun in 2008*, New York Times,
22 (Oct. 4, 2015), <https://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-volkswagen-to-evade-emissions-testing.html#:~:text=FRANKFURT%20%E2%80%94%20Volkswagen%20began%20installing%20software,internal%20inquiry%20said%20on%20Sunday>.

23 ⁶ *Id.*

24 ⁷ Jack Ewing, *Volkswagen Suspends 5th Executive in Emissions Scandal*, New York Times (Oct.
25 20, 2015) <https://www.nytimes.com/2015/10/21/business/volkswagen-suspends-5th-executive-in-emissions-scandal.html>.

26 ⁸ Michael Taylor, *Former Audi CEO Stadler to Stand Trial Over Dieselgate Fraud on Wednesday*,
27 Forbes (Sept. 28, 2020), <https://www.forbes.com/sites/michaeltaylor/2020/09/28/former-audi-ceo-stadler-to-stand-trial-over-dieselgate-fraud-on-wednesday/?sh=54d2b2cb9962>

28 ⁹ Josh Barnett, *Wolfgang Harz Many Leave Porsche Over VW Diesel Scandal*, Total 911: the
Porsche Magazine (Sept. 24, 2015) <https://www.total911.com/new-porsche-911-first-look-digital-edition-for-ios/>

1 the Porsche AG board.¹⁰ As head of engine and transmission development for all Volkswagen
2 brands and head of Porsche's sports car efforts—roles he held until he was fired in 2015—Hatz was
3 in charge of developing the Class Vehicles at issue in this case.¹¹

4 59. On information and belief, both Hatz and Winterkorn knew about the illegal
5 emissions and fuel economy scheme in the Class Vehicles.

6 60. Winterkorn and Hatz were not the only Volkswagen executives who had knowledge
7 of the fraud related to the Class Vehicles. Frank Tuch was Porsche's chief quality officer from 2002
8 until 2010, when Winterkorn made him chief quality officer for all of VW AG.¹²

9 61. Winterkorn and Tuch worked together closely from the start. According to *Das*
10 *Auto*, Volkswagen's in-house magazine, Tuch and Winterkorn met every Monday to discuss
11 quality issues, including quality issues with the Class Vehicles. They often took test drives in
12 vehicles manufactured by the company.¹³

13 62. In his role as head of quality assurance for VW AG, Tuch was intimately familiar
14 with Volkswagen, Audi, and Porsche engines and transmissions. Among his duties was the
15 development and production of components such as engines and transmissions for small, compact,
16 midsize, and full size product lines, including all the Class Vehicles.

17 63. Tuch's additional duties included responsibility for more than 100 factories, the
18 Audi and Porsche brands, and overseeing laboratory locations throughout the world, including the
19 Volkswagen laboratories in the United States, which were primarily responsible for emissions
20 testing of the Class Vehicles.

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24 ¹⁰ *Id.*; Taylor, *supra*.

25 ¹¹ Taylor, *supra*.

26 ¹² Jay Ramey, *VW's Head of Quality Control Resigns Amid Diesel Crisis*, Autoweek (Feb. 9,
2016), <https://www.autoweek.com/news/a1839911/vws-head-quality-control-resigns-amid-diesel-crisis/>

27 ¹³ Jack Ewing, *Volkswagen Suspends 5th Executive in Emissions Scandal*, New York Times (Oct.
28 20, 2015) <https://www.nytimes.com/2015/10/21/business/volkswagen-suspends-5th-executive-in-emissions-scandal.html>.

1 64. On information and belief, Tuch, like Winterkorn, Hatz, and senior management
2 within Porsche, knew about Porsche’s illegal emissions and fuel economy scheme in the Class
3 Vehicles from the beginning.

4 65. But even if senior Porsche management didn’t know about Porsche’s emissions
5 cheating in the Class Vehicles at the outset, they learned about it during a “crisis meeting” in
6 November 2015.¹⁴ Two months earlier, in September 2015, Porsche AG CEO Martin Mueller took
7 over the reins at VW AG following Martin Winterkorn’s resignation in the wake of the diesel
8 scandal.¹⁵ Mueller’s replacement at Porsche commissioned a systematic review of Porsche’s gas
9 fleet to determine if Porsche’s gas fleet (like its diesel fleet) cheated on emissions tests.¹⁶ In just
10 two months, engineers determined that the answer was “yes.” A “crisis meeting” was convened to
11 inform senior management of the findings.

12 66. During the crisis meeting, company engineering experts explained to a large group
13 that Porsche had engaged in emissions cheating in gasoline vehicles for years. In meetings attended
14 by senior management, these engineers explained that certain Porsche gasoline vehicles contained
15 defeat devices which caused the vehicles to perform differently—*e.g.*, to emit fewer pollutants like
16 CO₂—during testing on a dynamometer than in everyday driving.¹⁷ Upon information and belief,
17 Porsche did not contact the EPA or CARB about its findings. Instead, it continued to seek the
18 required approvals from the EPA and CARB to export its gasoline vehicles that contained illegal
19 defeat devices into the United States. Remarkably, Porsche engaged in this illegal behavior during
20 the diesel scandal, when the KBA, the EPA and CARB were investigating its diesel vehicles, and
21 during litigation involving its diesel and gasoline vehicles before this Court.

24 ¹⁴ Jan C. Wehmeyer, *The Gear Trick: Porsche apparently manipulated the transmissions of test*
25 *vehicles in order to improve their CO2 emissions – the public prosecutor is now investigating*,
26 *Business Insider* (October 4, 2020), [https://www.businessinsider.de/wirtschaft/zahnrad-trick-](https://www.businessinsider.de/wirtschaft/zahnrad-trick-porsche-manipulierte-offenbar-getriebe-von-testfahrzeugen-um-co2-ausstoss-zu-schoenen/)
porsche-manipulierte-offenbar-getriebe-von-testfahrzeugen-um-co2-ausstoss-zu-schoenen/
(German language article).

27 ¹⁵ *Id.*

28 ¹⁶ *Id.*

1 67. It took five additional years for these revelations to come to light. In June 2020, a
 2 whistleblower at Porsche reported at least one suspected defeat device in certain Porsche gasoline
 3 vehicles through an internal reporting system.¹⁸ Only then did Porsche report its findings to the
 4 KBA and the EPA.¹⁹ The Stuttgart public prosecutor has now opened a criminal investigation,
 5 poring over hundreds of thousands of documents, conducting interviews of employees, and
 6 reviewing data.²⁰ Its investigation is quickly bearing fruit. It has identified four specific Porsche
 7 employees it suspects played key roles in the fraud.²¹ Meanwhile, the KBA has now taken the
 8 extraordinary step of halting future certifications of conformity for certain Porsche vehicles.²²

9 **2. Porsche deceived consumers and regulators about the true fuel**
 10 **economy and emissions of the Class Vehicles.**

11 68. Porsche's emissions and fuel economy scheme took at least two forms: (a)
 12 submitting vehicles for regulatory testing that were materially different than the vehicles sold and
 13 leased to consumers (Axle Ratio fraud); and (b) falsely attesting that certain vehicles' high
 14 performance mode could pass emissions tests (Sport Plus fraud). The two elements of this
 15 scheme—described in further detail below—all had the effect of deceiving regulators, Plaintiffs,
 16 the proposed Class, and the public at large about the Class Vehicles' true emissions levels and fuel
 17 economy.

18 **a. Altered test vehicles: the Axle Ratio fraud**

19 69. One part of Porsche's scheme was to submit to the regulators testing results from
 20 doctored vehicles that differed in material ways from the production models Porsche ultimately
 21 sold and leased to consumers in the United States.

22
 23 _____
 24 ¹⁸ Simon Hage and Gerard Trauffetter, *Has Porsche Fiddled with the 911*, Spiegel (August 28,
 2020), <https://www.spiegel.de/wirtschaft/unternehmen/porsche-soll-auch-bei-benzinern-getrickst-haben-a-00000000-0002-0001-0000-000172728836> (German language article).

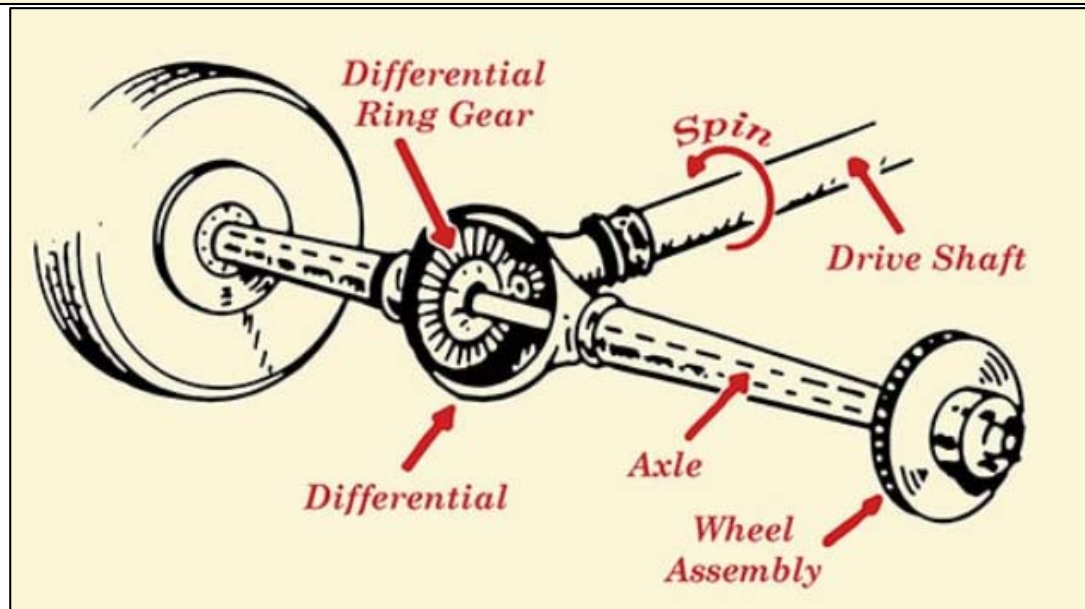
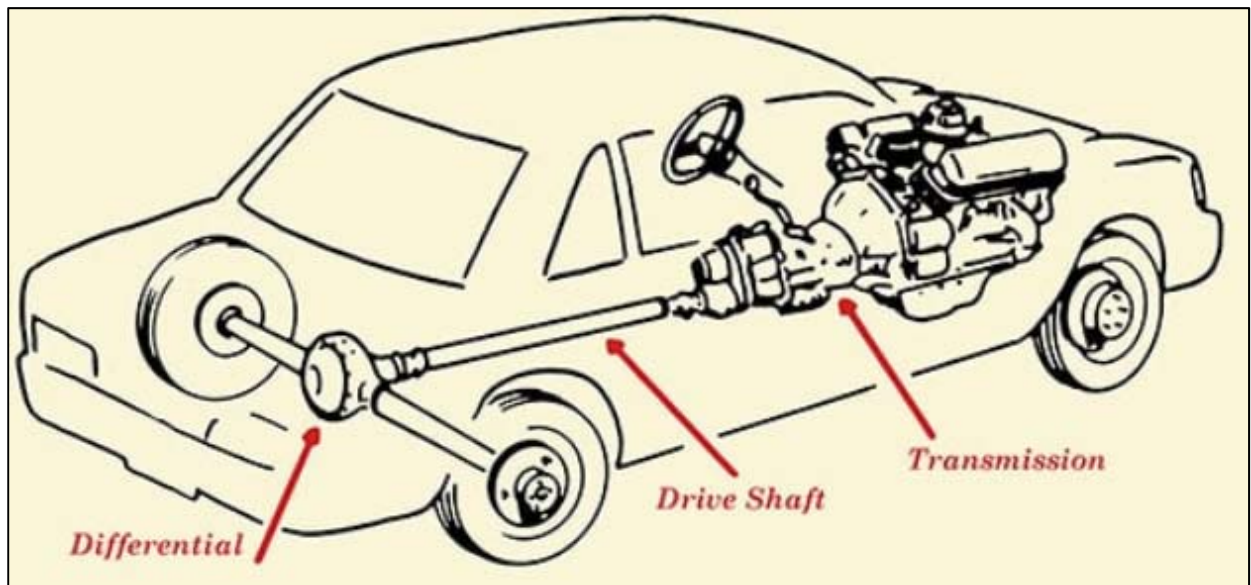
25 ¹⁹ *Id.*

26 ²⁰ Jan C. Wehmeyer, *supra* note 3.

27 ²¹ Gregor Habermehl, *New References to Exhaust Gas Manipulation*, Auto Motor Sport (October 1,
 2020), <https://www.auto-motor-und-sport.de/verkehr/porsche-verdacht-manipulation-getriebe-benzinmotoren/> (German language article).

28 ²² Simon Hage and Gerard Trauffetter, *supra* note 7.

1 70. Porsche consumers have come to expect sporty performance from its vehicles,
 2 including its flagship Porsche 911, which can accelerate to 100 kilometers per hour in under three
 3 seconds.²³ Porsche achieves this high level of performance by, among other things, carefully
 4 calibrating the drivetrain, including the ratio of the gears connecting the drive shaft to the rear
 5 axle.²⁴ Images illustrating these vehicle components are excerpted below.²⁵



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26 ²³ Jan C. Wehmeyer, *supra* note 3.

27 ²⁴ *Id.*

28 ²⁵ *Gearhead 101: the Drivetrain* (February 11, 2016),
<https://www.artofmanliness.com/articles/gearhead-101-the-drivetrain/>.

1 71. Put simply, the ratio between the gears on the drive shaft and gears on the axle (in
2 the differential) affects both the performance and fuel economy of a vehicle.²⁶ Vehicles with a
3 lower ratio can spin the axle, and propel the vehicle forward, at lower revolutions per minute
4 (“RPMs”), using less gasoline and emitting fewer pollutants. Vehicles with a higher ratio can,
5 under certain circumstances, achieve a sportier performance, but they do so at the expense of
6 increased emissions and fuel consumption.

7 72. Internal documents show that the drivetrains in the vehicles Porsche used for
8 regulatory testing differed materially from the vehicles Porsche produced for consumers.²⁷
9 Specifically, Porsche engineered specific vehicles for emissions and fuel economy testing that
10 contained a different differential (a lower gear ratio) than the vehicles it mass produced. The
11 test-specific vehicles were less dynamic but, according to internal investigations, emitted up to 8%
12 less CO₂ and obtained correspondingly better fuel economy than the vehicles Porsche actually sold
13 and leased to consumers.²⁸

14 73. Critically, Porsche did not dispute these characterizations in discussions with the
15 regulators. Porsche informed the Stuttgart public prosecutor, Germany’s Federal Motor Transport
16 Authority (KBA), and the U.S. regulators about its cheating in June 2020. Porsche employees also
17 confirmed in internal interviews that Porsche engaged in the so-called “gear trick,” by
18 manufacturing special, test-only cars with reduced CO₂ emissions while producing vehicles with
19 different specifications to sell to consumers.²⁹

20 74. Plaintiffs’ own expert testing confirms the fraud. As part of their pre-suit
21 investigation, Plaintiffs ran the full battery of regulatory tests—including the Federal Test
22 Procedure (“FTP75”), the Highway Fuel Economy Test (“HWFET”), and the “US06” test
23 cycles—on one of the vehicles Plaintiffs understood to be implicated by this scheme, a 2015
24 Porsche Boxster. Testing took place on a two-wheel dynamometer and followed the certification
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26 ²⁶ Gregor Habermehl, *supra* note 10.

27 ²⁷ *Id.*

28 ²⁸ *Id.*

²⁹ *Id.*

1 test procedures set out in 40 C.F.R. § 1065, such as using the approved fuel formulation for
2 certification tests, documenting vehicle conditioning, driving a pre-test cycle, and storing a vehicle
3 overnight at approximately 75 degrees Fahrenheit to “reset” before further testing. A picture of the
4 test vehicle in the laboratory is shown below.



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16 75. After completing the tests, Plaintiffs compared the results to those that Porsche
17 submitted to the regulators. A summary of that comparison is included below. It shows that the
18 carbon emissions from the production vehicles were significantly greater than those from the
19 manipulated, test-only vehicles. Using the EPA’s weighting formula, this yields a total CO₂
20 increase—and inversely related fuel economy decrease—of approximately 6%, in line with what
21 was reported in the German press. That translates into a reduction of approximately 2 miles per
22 gallon in the vehicle’s combined fuel economy rating, which could cost owners thousands of
23 dollars in extra fuel costs alone over the course of the vehicle’s lifespan.³⁰

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27 ³⁰ The EPA estimates the average useful lifespan of passenger vehicles to be at least 120,000 miles.
28 The useful lifespan of vehicles from a high-end manufacturer like Porsche is potentially even longer.

Test Cycle	HC (g/mi)	CO (g/mi)	NOx (g/mi)	CO2 (g/mi)	CREE (g/mi)	Fuel Economy	% FE Change
FTP - Certification	0.02890	0.1022	0.01824	319.00	319.0	26.18	
FTP - Plaintiffs' Test	0.05680	0.3610	0.01740	361.70	362.4	24.13	-7.8%
HFET - Certification	0.00282	0.0324	0.00485	198.00	198.0	44.88	
HFET - Plaintiffs' Test	0.00290	0.0450	0.14900	200.74	200.8	43.54	-3.0%
US06 - Certification	0.02297	0.2091	0.02760	292.47		30.36	
US06 - Plaintiffs' Test	0.01480	0.3829	0.04340	295.16	295.8	29.56	-2.6%
Combined (55% FTP / 45% HFET) Change:							-5.7%

76. Defendants’ scheme was both deceptive and illegal. For obvious reasons, vehicles used in regulatory testing must be materially identical to those sold to consumers. *See* 42 U.S.C. § 7541(a)(3)(A) (explaining that it is prohibited “for any person to remove . . . any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations . . . prior to its sale and delivery to the ultimate purchaser”).³¹ The EPA issued certificates of conformity for the vehicles as tested, and not as ultimately sold and leased to consumers. Accordingly, the Monroney label Porsche caused to be affixed to each and every Class Vehicle that indicated that each vehicle “is covered by a certificate of conformity” contained false information. *See* 42 U.S.C. § 7541(c)(3)(C).

77. In other words, the vehicles affected by the Axle Ratio fraud emitted more CO₂ and obtained worse fuel economy than represented, and—because they were not actually covered by legitimate Certificates of Conformity (“COCs”) and Executive Orders (“EOs”)—they were illegal to import or sell.

78. Through discovery, Plaintiffs’ counsel also obtained results for subsequent comprehensive testing performed on a significant number of vehicles identified in Plaintiffs’ complaint. This testing supports a measurable difference of up to at least 1-2 MPG from the City,

³¹ The EPA’s Certificates of Conformity—which are required for every vehicle sold in the United States—also explain that the certificates cover “only those new motor vehicles or vehicle engines which conform, in all material respects, to the design specifications that apply” to the vehicles that were tested. Similarly, CARB’s Executive Orders—required for every vehicle sold in California—clearly state that “[p]roduction vehicles shall be in all material respects the same as those for which certification is granted.”

1 Highway, and/or combined fuel economy (and relatedly, fleetwide CO₂ emission) from the results
2 represented to regulators and consumers.

3 79. Based on Plaintiffs' testing and data obtained through discovery, this fraud affects
4 the following vehicles:

Make	Code	Model	Derivative/ Transmission	Model Years
Porsche	981 I	Boxster	Base/AT	2013 – 2016
Porsche	981 I	Cayman	Base/AT	2014 – 2016
Porsche	981 I	Boxster	Base/MT	2013 – 2016
Porsche	981 I	Cayman	Base/MT	2014 – 2016
Porsche	981 I	Boxster	S/AT	2013 – 2016
Porsche	981 I	Cayman	S/AT	2014 – 2016
Porsche	981 I	Boxster	S/MT	2013 – 2016
Porsche	981 I	Cayman	S/MT	2014 – 2016
Porsche	981 I	Boxster/Cayman	GTS/AT	2015 – 2016
Porsche	981 I	Boxster/Cayman	GTS/MT	2015-2016
Porsche	981 I	Boxster	Spyder/MT	2016
Porsche	981 I	Cayman	GT4/MT	2016
Porsche	982	Boxster/Cayman	Base/AT	2017-2019
Porsche	982	Boxster/Cayman	Base/MT	2017-2019
Porsche	982	Boxster/Cayman	S/AT	2017-2019
Porsche	982	Boxster/Cayman	S/MT	2017-2019
Porsche	982	Boxster/Cayman	GTS/AT	2018-2019
Porsche	982	Boxster/Cayman	GTS/MT	2018-2019
Porsche	987 I	Boxster	Base/AT	2005-2008
Porsche	987 I	Boxster	Base/MT	2005-2008
Porsche	987 I	Cayman	Base/AT	2007-2008
Porsche	987 I	Cayman	Base/MT	2007-2008
Porsche	987 I	Boxster	S/AT	2005-2008
Porsche	987 I	Boxster	S/MT	2005-2008
Porsche	987 I	Cayman	S/AT	2006-2008
Porsche	987 I	Cayman	S/MT	2006-2008
Porsche	987 II	Boxster/Cayman	Base/AT	2009 – 2012
Porsche	987 II	Boxster/Cayman	S/AT	2009 – 2012
Porsche	987 II	Boxster/Cayman	S/MT	2009 – 2012
Porsche	987 II	Boxster/Cayman	Base/MT	2009-2012
Porsche	987 II	Boxster	Spyder/AT	2011-2012
Porsche	987 II	Boxster	Spyder/MT	2011-2012
Porsche	987 II	Cayman	R/AT	2012

	Make	Code	Model	Derivative/ Transmission	Model Years
1	Porsche	987 II	Cayman	R/MT	2012
2	Porsche	991 I	Carrera C2 Coupe/Cabrio	Base/AT	2012 – 2016
3	Porsche	991 I	Carrera C4 Coupe/Cabrio	Base/AT	2013 – 2016
4	Porsche	991 I	Targa 4	Base/AT	2014-2016
5	Porsche	991 I	Carrera C2 Coupe/Cabrio	S/MT	2012 – 2016
6	Porsche	991 I	Carrera C4 Coupe/Cabrio	S/AT	2013 – 2016
7	Porsche	991 I	Targa 4	S/AT	2014-2016
8	Porsche	991 I	Targa 4	GTS/AT	2016
9	Porsche	991 I	Carrera C2 Coupe/Cabrio	Base/MT	2012-2016
10	Porsche	991 I	Carrera C4 Coupe/Cabrio	Base/MT	2013-2016
11	Porsche	991 I	Carrera C4 Coupe/Cabrio	S/MT	2013–2016
12	Porsche	991 I	Carrera C2 Coupe/Cabrio	S/AT	2012-2016
13	Porsche	991 I	Targa 4	Base/MT	2014-2016
14	Porsche	991 I	Targa 4	S/MT	2014-2016
15	Porsche	991 I	Targa 4	GTS/MT	2016
16	Porsche	991 I	Carrera Coupe/Cabrio	Turbo/AT	2014-2016
17	Porsche	991 I	Carrera Coupe/Cabrio	Turbo S/AT	2014-2016
18	Porsche	991 I	Carrera C2 Coupe/Cabrio	GTS/AT	2015 – 2016
19	Porsche	991 I	Carrera C2 Coupe/Cabrio	GTS/MT	2015 – 2016
20	Porsche	991 I	Carrera C4 Coupe/Cabrio	GTS/MT	2015 – 2016
21	Porsche	991 I	Carrera C4 Coupe/Cabrio	GTS/AT	2015 – 2016
22	Porsche	991 I	911	GT3/AT	2014 – 2016
23	Porsche	991 I	911	GT3 RS/AT	2016
24	Porsche	991 I	911	R/MT	2016
25	Porsche	991 II	Carrera C2 Coupe/Cabrio	Base/AT	2017-2019
26	Porsche	991 II	Carrera C2 Coupe/Cabrio	Base/MT	2017-2019
27	Porsche	991 II	Carrera C4 Coupe/Cabrio	Base/AT	2017-2019
28	Porsche	991 II	Carrera C4 Coupe/Cabrio	Base/MT	2017-2019
29	Porsche	991 II	Carrera C2 Coupe/Cabrio	S/AT	2017-2019
30	Porsche	991 II	Carrera C2 Coupe/Cabrio	S/MT	2017-2019
31	Porsche	991 II	Carrera C4 Coupe/Cabrio	S/AT	2017-2019
32	Porsche	991 II	Carrera C4 Coupe/Cabrio	S/MT	2017-2019
33	Porsche	991 II	Targa	Base/AT	2017-2019
34	Porsche	991 II	Targa	Base/MT	2017-2019
35	Porsche	991 II	Targa	S/AT	2017-2019
36	Porsche	991 II	Targa	S/MT	2017-2019
37	Porsche	991 II	Targa	GTS/AT	2017-2019
38	Porsche	991 II	Targa	GTS/MT	2017-2019
39	Porsche	991 II	Carrera C2 Coupe/Cabrio	GTS/AT	2017-2019

	Make	Code	Model	Derivative/ Transmission	Model Years
1	Porsche	991 II	Carrera C2 Coupe/Cabrio	GTS/MT	2017-2019
2	Porsche	991 II	Carrera C4 Coupe/Cabrio	GTS/AT	2017-2019
3	Porsche	991 II	Carrera C4 Coupe/Cabrio	GTS/MT	2017-2019
4	Porsche	991 II	Carrera	T/AT	2018-2019
5	Porsche	991 II	Carrera	T/MT	2018-2019
6	Porsche	991 II	Carrera Coupe/Cabrio	Turbo/AT	2017-2019
7	Porsche	991 II	Carrera Coupe/Cabrio	Turbo S/AT	2017-2019
8	Porsche	991 II	911	GT3/AT	2018
9	Porsche	991 II	911	GT3/MT	2018
10	Porsche	991 II	911	GT2 RS/AT	2018
11	Porsche	997 I	Carrera C2 Coupe/Cabrio	Base/AT	2005 – 2008
12	Porsche	997 I	Carrera C2 Coupe/Cabrio	Base/MT	2008
13	Porsche	997 I	Carrera C2 Coupe/Cabrio	S/AT	2005 – 2008
14	Porsche	997 I	Carrera C2 Coupe/Cabrio	S/MT	2005 – 2008
15	Porsche	997 I	Carrera Coupe	Turbo/AT	2007 – 2009
16	Porsche	997 I	Carrera Cabrio	Turbo/AT	2008 – 2009
17	Porsche	997 I	Carrera C2 Coupe/Cabrio	Base/MT	2005-2007
18	Porsche	997 I	Carrera C4 Coupe/Cabrio	Base/AT	2006-2008
19	Porsche	997 I	Carrera C4 Coupe/Cabrio	Base/MT	2006-2008
20	Porsche	997 I	Carrera C4 Coupe/Cabrio	S/AT	2006-2008
21	Porsche	997 I	Carrera C4 Coupe/Cabrio	S/MT	2006-2008
22	Porsche	997 I	Targa	Base/AT	2007-2008
23	Porsche	997 I	Targa	Base/MT	2007-2008
24	Porsche	997 I	Targa	S/AT	2007-2008
25	Porsche	997 I	Targa	S/MT	2007-2008
26	Porsche	997 I	911 Coupe	Turbo/MT	2007-2009
27	Porsche	997 I	911 Cabrio	Turbo/MT	2008-2009
28	Porsche	997 I	911	GT3/MT	2007-2008
29	Porsche	997 I	911	GT3 RS/MT	2007-2008
30	Porsche	997 I	911	GT2/MT	2008-2009
31	Porsche	997 II	Carrera C2 Coupe/Cabrio	Base/AT	2009 – 2012
32	Porsche	997 II	Carrera C2 Coupe/Cabrio	S/AT	2009 – 2012
33	Porsche	997 II	911 C2 Coupe/Cabrio	GTS/AT	2011-2012
34	Porsche	997 II	Carrera C2 Coupe/Cabrio	Base/MT	2009-2012
35	Porsche	997 II	Carrera C4 Coupe/Cabrio	Base/AT	2009-2012
36	Porsche	997 II	Carrera C4 Coupe/Cabrio	Base/MT	2009-2012
37	Porsche	997 II	Carrera C2 Coupe/Cabrio	S/MT	2009-2012
38	Porsche	997 II	Carrera C4 Coupe/Cabrio	S/AT	2009-2012
39	Porsche	997 II	Carrera C4 Coupe/Cabrio	S/MT	2009-2012

	Make	Code	Model	Derivative/ Transmission	Model Years
1	Porsche	997 II	Targa	Base/AT	2009-2012
2	Porsche	997 II	Targa	Base/MT	2009-2012
3	Porsche	997 II	Targa	S/AT	2009-2012
4	Porsche	997 II	Targa	S/MT	2009-2012
5	Porsche	997 II	911 C2 Coupe/Cabrio	GTS/MT	2011-2012
6	Porsche	997 II	911 C4 Coupe/Cabrio	GTS/AT	2012
7	Porsche	997 II	911 C4 Coupe/Cabrio	GTS/MT	2012
8	Porsche	997 II	911	Speedster/AT	2011
9	Porsche	997 II	911 Coupe/Cabrio	Turbo/AT	2010-2013
10	Porsche	997 II	911 Coupe/Cabrio	Turbo/MT	2010-2013
11	Porsche	997 II	911 Coupe/Cabrio	Turbo S/AT	2011-2013
12	Porsche	997 II	911	GT3/MT	2010-2011
13	Porsche	997 II	911	GT3 RS/MT	2010-2011
14	Porsche	E1 I	Cayenne	Base/AT	2005-2006
15	Porsche	E1 I	Cayenne	Base/MT	2005-2006
16	Porsche	E1 I	Cayenne	S/AT	2005-2006
17	Porsche	E1 I	Cayenne	Turbo/AT	2005-2006
18	Porsche	E1 I	Cayenne	Turbo S/AT	2006
19	Porsche	E1 II	Cayenne	Base/MT	2008-2010
20	Porsche	E1 II	Cayenne	Base/AT	2008-2010
21	Porsche	E1 II	Cayenne	S/AT	2008-2010
22	Porsche	E1 II	Cayenne	GTS/AT	2008-2010
23	Porsche	E1 II	Cayenne	GTS/MT	2008-2010
24	Porsche	E1 II	Cayenne	Turbo/AT	2008-2010
25	Porsche	E1 II	Cayenne	Turbo S/AT	2009-2010
26	Porsche	E2 I	Cayenne	S/AT	2011 – 2014
27	Porsche	E2 I	Cayenne	Turbo/AT	2012 – 2014
28	Porsche	E2 I	Cayenne	Base/AT	2011-2014
	Porsche	E2 I	Cayenne	Base/MT	2011-2014
	Porsche	E2 I	Cayenne	GTS/AT	2013-2014
	Porsche	E2 I	Cayenne	Turbo S/AT	2014
	Porsche	E2 I	Cayenne	Turbo/AT	2011
	Porsche	E2 II	Cayenne	S/AT	2017 – 2018
	Porsche	E2 II	Cayenne	Base/AT	2016-2018
	Porsche	E2 II	Cayenne	S/AT	2015-2016
	Porsche	E2 II	Cayenne	Turbo/AT	2015-2018
	Porsche	E2 II	Cayenne	Turbo S/AT	2016-2018
	Porsche	E2 II	Cayenne	GTS/AT	2016-2018
	Porsche	G1 I	Panamera 4	S/AT	2010 – 2013

Make	Code	Model	Derivative/ Transmission	Model Years
Porsche	G1 I	Panamera	Base/AT	2011-2013
Porsche	G1 I	Panamera 4	Base/AT	2011-2013
Porsche	G1 I	Panamera	S/AT	2010-2013
Porsche	G1 I	Panamera	GTS/AT	2013
Porsche	G1 I	Panamera	Turbo/AT	2010-2013
Porsche	G1 I	Panamera	Turbo S/AT	2012-2013
Porsche	G1 II	Panamera	Base/AT	2014-2016
Porsche	G1 II	Panamera 4	Base/AT	2014-2016
Porsche	G1 II	Panamera	S/AT	2014-2016
Porsche	G1 II	Panamera 4	S/AT	2014-2016
Porsche	G1 II	Panamera 4	Turbo/AT	2014-2016
Porsche	G1 II	Panamera 4	Turbo S/AT	2014-2016
Porsche	G1 II	Panamera 4	GTS/AT	2014-2016
Porsche	G2 I	Panamera	Base/AT	2017-2018
Porsche	G2 I	Panamera 4	Base/AT	2017-2018
Porsche	G2 I	Panamera 4	S/AT	2017-2018
Porsche	G2 I	Panamera 4	Turbo/AT	2017-2020
Porsche	G2 I	Panamera 4	Turbo ST/AT	2018-2020
Porsche	Macan	Macan	Base/AT	2017-2018
Porsche	Macan	Macan	S/AT	2015-2018
Porsche	Macan	Macan	GTS/AT	2017-2018
Porsche	Macan	Macan	Turbo/AT	2015-2018

b. False attestations of emissions compliance: “Sport Plus” fraud

80. Porsche offers consumers a variety of driving modes in its vehicles. Different modes allow the consumers to customize their driving experience. For example, Porsche offers a “Sport Mode” for “more spirited drives through backroads or canyon passes.”³² As the name implies, this is a high performance mode where the throttle response and shifts are sharper and the suspension is stiffer. But the highest performing mode is its “Sport+ (Plus) Mode.” According to Porsche, “the ‘SPORT+’ mode is your go-to driving mode for track days or simply experiencing all of the performance your Porsche has to offer. The throttle response is instantaneous, shifts are lightning

³² Porsche Irvine: Porsche Driving Modes (2020), <https://www.porscheirvine.com/research/driving-modes.htm>.

1 fast, and the overall steering and suspension feel is tight and responsive.”³³ Sport Plus mode is a
2 standard feature on some Class Vehicles and an optional configuration for others.

3 81. As one might expect, the ultra-high performance enabled by Sport Plus mode comes
4 at the cost of higher emissions and greater fuel consumption. What a reasonable consumer would
5 not expect, however, is that the pollutants emitted in Sport Plus mode would actually exceed legal
6 limits, making the vehicles unlawful to import or sell. But this is precisely what happens in the
7 Class Vehicles equipped with Sport Plus mode.

8 82. Vehicle manufacturers are not always required to submit test cycle results for all of a
9 vehicle’s driving modes. Even where test results are not submitted for each driving mode, however,
10 manufacturers must attest to the EPA and CARB that each driving mode in every vehicle meets
11 certification requirements before the vehicles are approved for importation and sale.³⁴ This
12 includes attesting that vehicles do not exceed the statutory limit for NOx emissions in any driving
13 mode.³⁵ Moreover, the Clean Air Act requires that manufacturers warrant to all purchasing
14 consumers that their vehicles are designed, built, and equipped to conform with the applicable
15 emissions standards and are free from any defects which would cause it to fail to conform to such
16 regulations. *See* 42 U.S.C. § 7541(a)(1).

17 83. Accordingly, Porsche attested to the EPA and CARB, and warranted to every
18 consumer, that each of its gasoline vehicles complied with statutory limits for emissions in every
19 mode, including Sport Plus mode.³⁶ Porsche’s attestation was false. As Porsche’s internal
20 investigation has revealed, when certain gasoline vehicles operate in Sport Plus mode, they emit
21 pollutants, including NOx, in excess of legal requirements.³⁷

22 84. Plaintiffs’ own expert testing again confirms this fraud. To determine the scope of
23 this scheme, Plaintiffs ran the regulatory tests described above—FTP75, HWFET, and US06—on
24 a 2016 Porsche Cayenne equipped with Sport Plus mode. Testing took place on a four-wheel

25 ³³ *Id.*

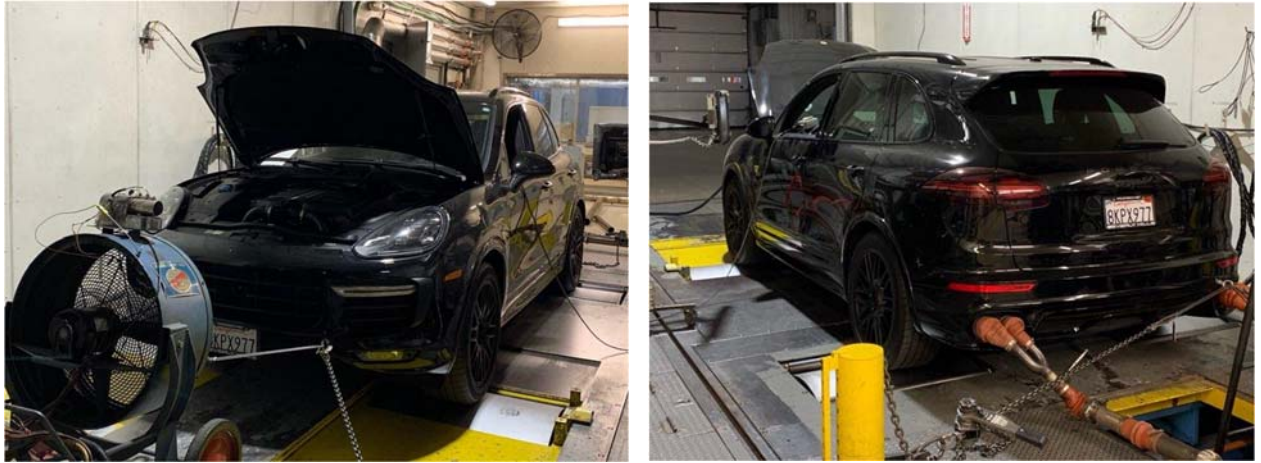
26 ³⁴ Jan C. Wehmeyer, *supra* note 10.

27 ³⁵ *Id.*

28 ³⁶ *Id.*

³⁷ *Id.*

1 dynamometer and followed the certification test procedures set out in 40 C.F.R. § 1065, such as
2 using the approved fuel formulation for certification tests, documenting vehicle conditioning,
3 driving a pre-test cycle, and storing a vehicle overnight at approximately 75 degrees Fahrenheit to
4 “reset” before further testing. Pictures of the test vehicle in the laboratory are shown below.



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13 85. The testing revealed that with Sport Plus mode activated, the vehicle’s emissions
14 significantly exceed the limits established for the Tier 2, Bin 5 category for which the vehicle was
15 certified. Specifically, for the US06 test cycle, the combined HC-NM (non-methane hydrocarbon)
16 + NOx emissions were 0.4625 grams/mile, which is nearly *double the legal limit* of 0.25
17 grams/mile. This means that the Certificates of Conformity and Executive Orders that Porsche
18 sought and received for these vehicles were fraudulently obtained, and the vehicles were illegal to
19 import into or sell or lease in the United States.

20 86. Recent developments further support these allegations, corroborate Plaintiff’s
21 testing, and indicate that the list of implicated vehicles is likely to be extensive. In or about
22 November 2020, Porsche issued a secretive “Stop Sale” order directing its dealers not to “sell,
23 lease, rent or loan” certain vehicles equipped with a “Sport Chrono” package (Porsche’s term for
24 the bundle of optional features that includes Sport Plus mode), as well as models that include Sport
25 Plus mode as a standard feature.
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1 87. The Stop Sale—parts of which are excerpted below—applies to more than 20
2 models and variants over seven model years (2012 – 2018), all of which Porsche admitted were
3 being investigated for “emissions performance” issues.³⁸

4 88. Subsequently, on or around October 2021, Porsche commenced a voluntary recall
5 to reduce exhaust emissions from several makes and models when operated in Sport+ mode.

6 WLN1 Stop Sale - Quality Assurance Hold 7 for certain used vehicles equipped with Sport 8 Chrono



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³⁸ Specially, the stop sale order covers the following vehicles if equipped with the Sport Chrono package (which includes Sport Plus mode): MY 2012-2016 991 Carrera, Cabriolet, 4, 4 Cabriolet, S, S Cabriolet, 4S, and 4S Cabriolet; MY 2015-2016 Targa and Targa 4S; MY 2015-2017 E2 II Cayenne S; MY 2016-2018 E2 II Cayenne GTS; MY 2014-2016 Panamera G1 II Turbo and Turbo Executive; and MY 2013-2014 981 Boxster S and Cayman S. The order also extends to all of the following: MY 2015-2016 991 GTS, GTS Cabriolet, 4 GTS, 4 GTS Cabriolet, and 4 GTS Targa; and MY 2014-2016 Panamera G1 II Turbo S and Turbo S Executive. (As used here, “991” refers to newer generations of the 911).

DEALERS SHOULD NOT SELL, LEASE, RENT OR LOAN ANY VEHICLES AFFECTED BY THIS ACTION IN DEALER INVENTORY UNTIL FURTHER NOTICE.

Overview

Porsche is currently investigating emissions performance of certain specific Model Year 2012 to 2018 vehicles equipped with Sport Chrono Package.

While this investigation continues and out of abundance of caution, Porsche is requesting that the following vehicles in dealer's inventory be placed on Quality Assurance hold until further notice.

What Porsche Will Do

Porsche is working to develop an interim solution and will follow up with additional instructions as soon as they are available.

Please inform all necessary dealer staff of this notice as soon as possible.

Moreover, while Porsche disclosed this information to dealers, it did so secretly,³⁹ and it continues to conceal the truth about the vehicles from Plaintiffs, the Class, and the public.

89. As with the Axle Ratio fraud, Porsche intentionally concealed and did not disclose the Sport Plus fraud to regulators or consumers and instead continued to sell and lease illegal vehicles to Plaintiffs and the Class for years.

90. As with the Long Rear Axle scheme, Plaintiffs' counsel also obtained results for subsequent comprehensive testing performed on a significant number of vehicles identified in Plaintiffs' complaint. This testing confirms that the following vehicle models and model years are implicated by the Sport+ fraud:

³⁹ On information and belief, Porsche issued the "quality assurance hold" internally and did not intend for its public release. Copies of the document were leaked by certain dealers to consumers who then shared it on a website for automotive consumer news and information in a forum entitled "Stop Sale Campaign on 911 with Sport Chrono?" See <https://rennlist.com/forums/991/1222745-stop-sale-campaign-on-911-with-sport-chrono.html>.

Make	Code	Model	Derivative	Model Years
Porsche	981 I	Boxster	Base	2013 – 2016
Porsche	981 I	Cayman	Base	2014 – 2016
Porsche	981 I	Boxster	S	2013 – 2016
Porsche	981 I	Cayman	S	2014 – 2016
Porsche	981 I	Boxster/Cayman	GTS	2015 – 2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	GTS	2015 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	GTS	2015 – 2016
Porsche	991 I	911	GT3	2014 – 2016 ⁴⁰
Porsche	991 I	911	GT3 RS	2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	S	2012 – 2016
Porsche	991 I	Carrera C2 Coupe/Cabrio	Base	2012 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	Base	2013 – 2016
Porsche	991 I	Carrera C4 Coupe/Cabrio	S	2013 – 2016
Porsche	991 I	Targa 4	Base	2014 – 2016
Porsche	991 I	Targa 4	S	2014 – 2016
Porsche	991 I	Targa 4	GTS	2016
Porsche	E2 II	Cayenne	GTS	2016 – 2018
Porsche	G1 II	Panamera	Base	2014 – 2016
Porsche	G1 II	Panamera 4	Base	2014 – 2016
Porsche	G1 II	Panamera	S	2014 – 2016
Porsche	G1 II	Panamera 4	S	2014 – 2016
Porsche	G1 II	Panamera 4	GTS	2014 – 2016
Porsche	G1 II	Panamera 4	Turbo	2014 – 2016
Porsche	G1 II	Panamera 4	Turbo S	2014 – 2016

3. **Porsche—like all vehicle manufacturers—was subject to specific regulations governing fleet-wide CO₂ emissions and vehicle-specific NO_x emissions.**

91. Porsche cheated on emissions for a reason. As detailed further herein, both emissions and fuel economy are material to consumers—including Plaintiffs and the Class. They are also highly regulated.

a. **Fleet-wide CO₂ regulations**

92. California, one of the leaders in vehicle emissions regulations, implemented new greenhouse gas regulations in 2006 that took effect in 2009. These regulations, like the federal rules that followed, set a ceiling for a manufacturer’s fleet-wide average emissions and governed all

⁴⁰ Only 991 I GT3 vehicles with certain software versions are included in the Sport+ Class.

1 light- and medium-duty vehicles sold in California, one of Porsche's biggest markets in the United
2 States.

3 93. Federal fleet-wide standards for CO₂ emissions and average fuel economy followed
4 suit. New regulations affecting model year 2012-2015 vehicles were implemented in 2011,
5 beginning with 2012 model years, and increased in stringency through model year 2016.⁴¹ New,
6 even more stringent standards went into effect for model year 2017.⁴²

7 94. The EPA set CO₂ emissions standards for light-duty vehicles under section 202(a) of
8 the Clean Air Act. Under these standards, by model year 2016, light-duty vehicles were required to
9 meet an estimated combined average emissions level of 250 grams/mile of CO₂. The National
10 Highway Traffic Safety Administration ("NHTSA") set fleet-wide Corporate Average Fuel
11 Economy ("CAFE") standards for passenger cars and light trucks under 49 U.S.C. § 32902.
12 NHTSA's standards required manufacturers to meet an estimated combined average fuel economy
13 level of 34.1 miles per gallon ("MPG") by model year 2016.

14 95. Defendants knew that their fleet of vehicles had to meet these standards to be sold in
15 the United States and were equally aware that fuel consumption (MPG ratings) and emissions are
16 important factors for consumers choosing a vehicle to purchase or lease. Rather than meeting these
17 standards through legitimate means, however, Defendants cheated on the emissions tests in the
18 Class Vehicles to feign compliance and cater to consumer demands. They then misled consumers
19 by representing the Class Vehicles as consuming less fuel and emitting less CO₂ and other
20 pollutants than they actually do in normal driving conditions.

21 **b. Effect on Fuel Economy Ratings**

22 96. Defendants' deception had a direct impact on the Class Vehicles' fuel economy
23 ratings.

24
25
26 ⁴¹ See, e.g., Federal Registrar Vol. 75 p. 25324 (May 7, 2010) (summarizing new regulations)
<https://www.gpo.gov/fdsys/pkg/FR-2010-05-07/pdf/2010-8159.pdf>, p.8.

27 ⁴² Environmental and Energy Study Institute, *Fact Sheet: Vehicle Efficiency and Emissions*
28 *Standards* (August 26, 2015),
<http://www.eesi.org/papers/view/fact-sheet-vehicle-efficiency-and-emissions-standards#1>.

1 97. During the regulatory testing cycles, manufacturers calculate the amount of fuel
2 consumed, in part, by measuring tailpipe emissions. This process includes measuring
3 un-combusted or partially combusted gasoline (hydrocarbons or HC), carbon monoxide (CO), and
4 CO₂. The amount of carbon produced is then converted to the amount of gasoline required to
5 produce the carbon in the exhaust. Based on this equation, as the amount of CO₂ produced
6 increases, the gasoline used increases and the fuel economy decreases. Within this framework, if a
7 Class Vehicle produced less CO₂ during laboratory testing, but higher CO₂ when driven on road,
8 the Monroney sticker would correspondingly represent better estimated fuel economy than it would
9 actually achieve during every day driving.

10 98. This is exactly what happened with the Class Vehicles.

11 c. **NOx regulations**

12 99. NOx is a dangerous pollutant linked with serious health risks and climate change.
13 Congress first began regulating NOx as a tailpipe emission with the passage of the Clean Air Act in
14 1970. The standards went into effect in 1975 mandated that all passenger cars and light-duty trucks
15 emit no more than 3.1 grams per mile of NOx. In 1990, the CAA was amended to set a lower
16 standard (0.6 grams per mile) for NOx emissions, called Tier 1, effective in 1994.

17 100. In 1999, newer standards were adopted, called Tier 2, which began taking effect in
18 2004, and which govern most of the Class Vehicles. The Tier 2 standards apply in two ways. First,
19 as with CO₂ regulations, a manufacturer's entire fleet must not exceed a specific average. Second,
20 each individual vehicle must also be certified to one of eight specific "bins," which limit the
21 amount of NOx (among other pollutants) that any *individual* vehicle can legally emit.

22 101. As described above, Porsche represented to the regulators that, in all available
23 driving modes, its vehicles' NOx emissions did not exceed the limits set by the Tier 2 bins to which
24 they were certified. This was false. As a result, the Certificates of Conformity and Executive Orders
25 covering these vehicles were fraudulently obtained, and the vehicles were not legal to sell in the
26 United States.

C. Defendants’ advertising featured inflated fuel economy ratings and false promises of environmental friendliness.

102. To many consumers, including Plaintiffs, environmental friendliness, fuel economy, and the range of miles between fuel tank refills are important factors in their decision to purchase or lease a vehicle. Defendants targeted these preferences in their misleading advertising and other consumer-facing representations about the Class Vehicles.

103. As alleged above, new vehicles include a window or “Monroney” sticker disclosing the vehicles’ fuel economy. The fuel economy ratings disclosed on Monroney stickers for the Class Vehicles—and repeated in Defendants’ own representations to the Class—were false because they were calculated in testing conditions that, because of the fraudulent scheme alleged above, did not reflect on-road driving.

104. Monroney labels from some of the Class Vehicles are included below to exemplify these representations:

2010 911 Turbo
 Exterior: Dark Blue Metallic
 Interior: Brown Natural Leather

STANDARD EQUIPMENT
 Technical/Mechanical
 Permanently mounted 2.9 liter 3.0 liter 350 HP ABS (4x) brake
 Water cooled air-ally shock & cylinder heads
 Shock full function, 24V
 Integrated air-ally suspension system
 Double overhead cam w/ 4 valves per cyl
 TurboCharged Plus variable valve timing and lift
 Twin turbochargers w/ 270 degree turbine
 Compressor, twin inter-cooler
 Cylinder specific air-fuel control
 8 speed manual transmission with 7-speed SportShift
 All wheel drive with 4x4 control system
 Porsche Traction Management
 Electronically controlled central diff
 PSM Porsche Stability Management with ABS
 ASR, Adaptive Drive (optional), ESP
 PASM Porsche Active Suspension Management
 Steering Assist/Steering Function with Brake Assist
 12.8" wheel offset w/ 1.9 degree camber
 12.8" wheel offset w/ 4 degree camber
 8.5" wheel offset w/ 1.5 degree camber
 12.8" wheel offset w/ 1.5 degree camber
 12.8" wheel offset w/ 1.5 degree camber

OPTIONS
 411 Lites 13000
 Dark Blue Metallic 0
 Dark Blue Metallic 0
 Brown Natural leather 15510
 Porsche Suspension/steering PSM 4000
 Hooded front fenders 510
 Seal ventilation 840
 Bluetooth Phone Interface 490
 Sport Chrono Package Turbo 3600
 *Porsche Active Interior Care 290
 Sport Seats with 20X Pockets 490
 Leather Vehicle Storage Life 0

PRICE
 130000

EXCLUSIVE OPTIONS
 Destination/Export Fee/Tax

Warranty/Usability
 Limited 4 Year/50,000 mile Warranty/3
 Limited 4 Year/50,000 mile Warranty/3
 22 Year Limited Mile Corrosion
 Porsche Financial Assistance
 Ask about finance and lease options
 available through
 Porsche Financial Services.

Environmental Performance
 Protect the environment, choose vehicles with higher scores:
 Global Warming Score 6
 Smog Score 4

GOVERNMENT SAFETY RATINGS
 The vehicle has not been rated by the government
 for frontal crash, side-impact or rollover risk.
 Source: National Highway Traffic Safety Administration
 (NHTSA)
 www.safercar.gov or 1-888-327-4234

PARTS CONTENT INFORMATION:
 For vehicles in this car line: US/Canada Parts Content: 3%
 Major Sources of Foreign Parts Content: Germany: 79%
 NOTE: Parts content does not include final assembly, distribution, or other non-parts costs.
 For this Vehicle: Final Assembly Point: Stuttgart, Germany
 Country of Origin: Engine: Germany Transmission: Germany

EPA Fuel Economy Estimates
 CITY MPG 17
 Estimated Annual Fuel Cost \$2209
 Highway MPG 25
 Combined Fuel Economy 19
 TOTAL PRICE* \$ 146,285
 WPOAZ394A5766100
 Porsche of Rodyn
 22 Minerva Avenue
 Rodyn Heights NY 11577

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Order Reference: 241243 Commission No: 279423 VIN Number: WPOAAZ7A70L070217

2012 Panamera 4
 Exterior: Carrara White
 Interior: Espresso Natural Leather

STANDARD EQUIPMENT
Technical/Mechanical
 3.6 liter V6 305 HP, 255.5 cu ft torque
 Automatic all-terrain drive (A/TD) & cylinder head
 Performance PASM (Performance Active Steering Management) 4 valves per cylinder
 Variable Valve Timing (VTEC) and is integrated by ramp identification system
 7 speed PASM (Performance Active Steering Management) 7DCT
 Absorber drive
 Double wishbone suspension
 MacPherson LH suspension w/ variable ball
 Porsche Stability Management (PSM) w/ ABS, ESP, ESC, MS-Drive-Mode (optional) 3.2 L turbo engine w/ 200 hp output
 PASM 4 wheel drive w/ 4 cylinder w/ PASM
 PASM 4 wheel drive w/ 4 cylinder w/ PASM
 PASM 4 wheel drive w/ 4 cylinder w/ PASM
 Tire Pressure Monitoring System (TPMS)
 ABS/ESP
 ** Vehicle may be equipped w/ performance or alternative tires. Performance tires are not included for some driving.
 Consult your Porsche dealer or nearest dealer for further information.

Passive Safety/Environment
Passive Safety/Environment
 LEV-1 Low Emission Vehicle
 Vehicle speed sensor, VTEC valve timing
 Exhaust Gas Recirculation (EGR) control
 Air to air filter, Sport front fenders w/ performance, nose fenders & light air sport rear fender w/ variable LED light
 Turbo engine on rear axle
 Fully illuminated high strength steel body with front and rear deformation zones

Comfort/Convenience
 Multifunction leather wheel, manually adjustable steering column height lockers, power power and front seats w/ driver memory (optional) auto start with keyless entry
 215 watts & 11 channels
 Internal radio interface w/ iPod/USB ports
 Bluetooth® OB hands-free phone interface
 Factory equipped and automatic, clock w/ power windows w/ auto door lock
 Cruise Control, Navigation PO & 12V voltage Multifunction for controls
 2 cupholders in front, 2 in rear
 See dealer

OPTIONS
 Performance's Signature Roof Rack
 Panamera 4
 Carrara White
 Espresso Natural Leather
 Sport Active Suspension
 Sport Active Steering
 14-way Power Seat w/ Memory
 14-way Power Seat w/ Memory
 14-way Power Seat w/ Memory, Left
 14-way Power Seat w/ Memory, Right
 20" 801 Turbo S Wheels
 Wheel Center with Color Coat
 LED/High/Low/Beats/On/Off
 Porsche Active Suspension Mgr
 Sport Suspension Front (Sport Active Steering)/Rear (Sport Active Steering) P
 Porsche Entry & Drive
 ParkView PSM w/ No Camera
 SportVox
 Sport Performance Sound System
 SportVox 7th Set Radio Tower
 Porsche Communication Management (PCM) w/ 11.1" Multi-Touch Display
 15" Sport Multifunction Package
 15" Sport Multifunction Package
 15" Sport Multifunction Package
 Side Mirror (Studio/Design)
 Side Package w/ No Locks

EXCLUSIVE OPTIONS
 DESTINATION CHARGE: 285
 TOTAL PRICE* \$ 103,350

Warranty/Durability
 Limited 4 Year/50,000 Mile Warranty/60 Months
 Limited 4 Year/50,000 Mile Warranty/60 Months
 12 Year Limited Anti-Rust
 Porsche Roadside Assistance
 Porsche Concierge Services
 Ask about finance and lease options available through Porsche Financial Services.

Environmental Performance
Global Warming Score
Smog Score

GOVERNMENT SAFETY RATINGS
 This vehicle has not been used by the government for federal crash, side crash or rollover test.
 Source: National Highway Traffic Safety Administration (NHTSA)
 www.safercar.gov or 1-888-327-4338

PARTS CONTENT INFORMATION
 For vehicles in this car line: US/Canada Parts Content: 3%, Major Sources of Foreign Parts Content: Germany: 73%, 90% Parts content does not include final assembly, distribution, or other non-parts work.
 For this Vehicle: Final Assembly Point: Leipzig, Germany
 Country of Origin: Germany
 Transmission: Germany

EPA Fuel Economy Estimates
 CITY MPG: 18
 Estimated Annual Fuel Cost: \$2820
 Highway MPG: 26
 Combined Fuel Economy: 21

Order Reference: 241243 Commission No: 279423 VIN Number: WPOAAZ7A70L070217

2012 Panamera 4S
 Exterior: Black
 Interior: Black

STANDARD EQUIPMENT
Technical/Mechanical
 4.8 liter V8, 355 HP, 305.5 cu ft torque
 Automatic all-terrain drive (A/TD) & cylinder head
 Variable Valve Timing (VTEC) and is integrated by ramp identification system
 6 valves per cylinder
 Performance PASM (Performance Active Steering Management) 4 valves per cylinder
 Integrated drive ramp identification system
 7 speed PASM (Performance Active Steering Management) 7DCT
 Absorber drive
 Double wishbone suspension
 MacPherson LH suspension w/ variable ball
 Porsche Stability Management (PSM) w/ ABS, ESP, ESC, MS-Drive-Mode (optional) 3.2 L turbo engine w/ 200 hp output
 PASM 4 wheel drive w/ 4 cylinder w/ PASM
 PASM 4 wheel drive w/ 4 cylinder w/ PASM
 PASM 4 wheel drive w/ 4 cylinder w/ PASM
 Tire Pressure Monitoring System (TPMS)
 ABS/ESP
 ** Vehicle may be equipped w/ performance or alternative tires. Performance tires are not included for some driving.
 Consult your Porsche dealer or nearest dealer for further information.

Passive Safety/Environment
Passive Safety/Environment
 LEV-1 Low Emission Vehicle
 Vehicle speed sensor, VTEC valve timing
 Exhaust Gas Recirculation (EGR) control
 Air to air filter, Sport front fenders w/ performance, nose fenders & light air sport rear fender w/ variable LED light
 Turbo engine on rear axle
 Fully illuminated high strength steel body with front and rear deformation zones

Comfort/Convenience
 Multifunction leather wheel, manually adjustable steering column height & lockers, power power and front seats w/ driver memory (optional) auto start with keyless entry
 215 watts & 11 channels
 Internal radio interface w/ iPod/USB ports
 Bluetooth® OB hands-free phone interface
 Factory equipped and automatic, clock w/ power windows w/ auto door lock
 Cruise Control, Navigation PO & 12V voltage Multifunction for controls
 2 cupholders in front, 2 in rear
 See dealer

OPTIONS
 Performance's Signature Roof Rack
 Panamera 4S
 Black
 Black
 Sport Active Suspension
 Sport Active Steering
 14-way Power Seat w/ Memory
 14-way Power Seat w/ Memory
 14-way Power Seat w/ Memory, Left
 14-way Power Seat w/ Memory, Right
 20" 801 Turbo S Wheels
 Wheel Center with Color Coat
 LED/High/Low/Beats/On/Off
 Porsche Active Suspension Mgr
 Sport Suspension Front (Sport Active Steering)/Rear (Sport Active Steering) P
 Porsche Entry & Drive
 ParkView PSM w/ No Camera
 SportVox
 Sport Performance Sound System
 SportVox 7th Set Radio Tower
 Porsche Communication Management (PCM) w/ 11.1" Multi-Touch Display
 15" Sport Multifunction Package
 15" Sport Multifunction Package
 15" Sport Multifunction Package
 Side Mirror (Studio/Design)
 Side Package w/ No Locks

EXCLUSIVE OPTIONS
 DESTINATION CHARGE: 285
 TOTAL PRICE* \$ 113,795

Warranty/Durability
 Limited 4 Year/50,000 Mile Warranty/60 Months
 Limited 4 Year/50,000 Mile Warranty/60 Months
 12 Year Limited Anti-Rust
 Porsche Roadside Assistance
 Porsche Concierge Services
 Ask about finance and lease options available through Porsche Financial Services.


Environmental Performance
Global Warming Score
Smog Score

GOVERNMENT SAFETY RATINGS
 This vehicle has not been used by the government for federal crash, side crash or rollover test.
 Source: National Highway Traffic Safety Administration (NHTSA)
 www.safercar.gov or 1-888-327-4338

PARTS CONTENT INFORMATION
 For vehicles in this car line: US/Canada Parts Content: 3%, Major Sources of Foreign Parts Content: Germany: 74%, 90% Parts content does not include final assembly, distribution, or other non-parts work.
 For this Vehicle: Final Assembly Point: Leipzig, Germany
 Country of Origin: Germany
 Transmission: Germany


EPA Fuel Economy Estimates
 CITY MPG: 16
 Estimated Annual Fuel Cost: \$2525
 Highway MPG: 24
 Combined Fuel Economy: 19

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Year: 2016 Make: Porsche Model: Cayenne AWD 4dr Turbo VIN: WP1AC2A20GLA88370		Engine: 8 Cylinder Engine Transmission: 8-speed Exterior: Black Interior: Leather Interior in Black																																															
MECHANICAL <ul style="list-style-type: none"> • 2.92 Axle Ratio • Full-Time All-Wheel Drive • 92-Amp/Hr Maintenance-Free Battery • Towing Equipment -inc: Trailer Sway Control • 4-Corner Auto-Leveling Suspension • Hydraulic Power-Assist Speed-Sensing Steering • 26.4 Gal. Fuel Tank • Permanent Locking Hubs 		CITY MPG 14																																															
EXTERIOR <ul style="list-style-type: none"> • Spare Tire Mobility Kit • Steel Spare Wheel • Clearcoat Paint • Body-Colored Front Bumper • Body-Colored Rear Bumper • Aluminum Side Windows Trim and Black Front Windshield Trim • Body-Colored Door Handles • Body-Colored Fender Flares • Body-Colored Power Heated Auto Dimming Side Mirrors w/Power Folding • Fixed Rear Window w/Fixed Interval Wiper and Defroster • Deep Tinted Glass • Rain Detecting Variable Intermittent Wipers w/Heated Jets • Front Windshield -inc: Sun Visor Strip • Fully Galvanized Steel Panels • Lip Spoiler • Body-Colored Grille • Front License Plate Bracket • Front And Rear Fog Lamps • Perimeter/Approach Lights • LED Brakelights • Cornering Lights 		HIGHWAY MPG 21																																															
ENTERTAINMENT <ul style="list-style-type: none"> • Audio Theft Deterrent • Concealed Diversity Antenna • 585w Regular Amplifier • Digital Signal Processor • Bluetooth Wireless Phone Connectivity • 2 LCD Monitors In The Front 		 Actual mileage will vary with options, driving conditions, driving habits and vehicle's condition.																																															
INTERIOR <ul style="list-style-type: none"> • Power Tilt/Telescoping Steering Column • Front Cupholder • Rear Cupholder 		New																																															
<ul style="list-style-type: none"> • Compass • HomeLink Garage Door Transmitter • Cruise Control • HVAC -inc: Underseat Ducts and Console Ducts • Illuminated Locking Glove Box • Driver Foot Rest • Leather Door Trim Insert • Leather/Metal-Look Gear Shift Knob • Full Alcantara Simulated Suede Headliner • Driver And Passenger Visor Vanity Mirrors w/Driver And Passenger Illumination, Driver And Passenger Auxiliary Mirror • Day-Night Auto-Dimming Rearview Mirror • Full Floor Console w/Covered Storage, Mini Overhead Console and 5 12V DC Power Outlets • Front And Rear Map Lights • Delay Off Interior Lighting • Carpet Floor Trim and Carpet Trunk Lid/Rear Cargo Door Trim • Trunk/Hatch Auto-Latch • Cargo Area Concealed Storage • Roll-Up Cargo Cover • Cargo Features -inc: Spare Tire Mobility Kit • Cargo Space Lights • FOB Controls -inc: Trunk/Hatch/Tailgate and Windows • Refrigerated/Cooled Box Located In The Glovebox, Driver / Passenger And Rear Door Bins and 1st Row Underseat Storage • Delayed Accessory Power • Systems Monitor • Outside Temp Gauge • Redundant Digital Speedometer • Manual Adjustable Front Head Restraints and Manual Adjustable Rear Head Restraints • Sliding Front Center Armrest and Rear Center Armrest • 2 Seatback Storage Pockets • Perimeter Alarm • 5 12V DC Power Outlets • Air Filtration 		<table border="1"> <tr> <td>MSRP</td> <td>\$114,460.00</td> </tr> <tr> <td colspan="2">INSTALLED OPTIONS</td> </tr> <tr> <td>[C4I] Wheels: 21" Cayenne Sport Classic Satin</td> <td>\$3,850</td> </tr> <tr> <td>[Q2J] 14 Way Power Seats W/Memory Package (Q2J)</td> <td>\$0</td> </tr> <tr> <td>[LC] Black, Leather Seat Trim</td> <td>\$0</td> </tr> <tr> <td>[PJ] Premium Plus Package</td> <td>\$3,660</td> </tr> <tr> <td>[1NP] Wheel Hub Cover W/Colored Porsche Crest</td> <td>\$185</td> </tr> <tr> <td>[Q4] Exterior Package In High Gloss Black</td> <td>\$150</td> </tr> <tr> <td>[G22] Soft Close Doors</td> <td>\$770</td> </tr> <tr> <td>[8S] Tinted Led Taillights</td> <td>\$650</td> </tr> <tr> <td>[4D3] Front Seat Ventilation</td> <td>included</td> </tr> <tr> <td>[5ZF] Porsche Crest On Front & Rear Seat Headrests</td> <td>\$570</td> </tr> <tr> <td>[8T3] Adaptive Cruise Control W/Porsche Active Safe</td> <td>\$2,300</td> </tr> <tr> <td>[9AH] 4 Zone Climate Control</td> <td>\$990</td> </tr> <tr> <td>[7X8] Front & Rear Parkassist W/Reversing Camera</td> <td>included</td> </tr> <tr> <td>[7Y1] Lane Change Assist (Lca)</td> <td>included</td> </tr> <tr> <td>[9JB] Smoker Package</td> <td>\$0</td> </tr> <tr> <td>[7M7] Illuminated Stainless Steel Door Sill Guards</td> <td>\$1,100</td> </tr> <tr> <td>[BASE] Cayenne Turbo</td> <td></td> </tr> <tr> <td>[A1] Black</td> <td></td> </tr> <tr> <td>[G1G] 8 Speed Tiptronic S</td> <td></td> </tr> <tr> <td>Original Shipping Charge</td> <td>\$1,050</td> </tr> <tr> <td>RETAIL PRICE (ORIGINALLY NEW)</td> <td>\$129,735.00</td> </tr> </table>		MSRP	\$114,460.00	INSTALLED OPTIONS		[C4I] Wheels: 21" Cayenne Sport Classic Satin	\$3,850	[Q2J] 14 Way Power Seats W/Memory Package (Q2J)	\$0	[LC] Black, Leather Seat Trim	\$0	[PJ] Premium Plus Package	\$3,660	[1NP] Wheel Hub Cover W/Colored Porsche Crest	\$185	[Q4] Exterior Package In High Gloss Black	\$150	[G22] Soft Close Doors	\$770	[8S] Tinted Led Taillights	\$650	[4D3] Front Seat Ventilation	included	[5ZF] Porsche Crest On Front & Rear Seat Headrests	\$570	[8T3] Adaptive Cruise Control W/Porsche Active Safe	\$2,300	[9AH] 4 Zone Climate Control	\$990	[7X8] Front & Rear Parkassist W/Reversing Camera	included	[7Y1] Lane Change Assist (Lca)	included	[9JB] Smoker Package	\$0	[7M7] Illuminated Stainless Steel Door Sill Guards	\$1,100	[BASE] Cayenne Turbo		[A1] Black		[G1G] 8 Speed Tiptronic S		Original Shipping Charge	\$1,050	RETAIL PRICE (ORIGINALLY NEW)	\$129,735.00
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SAFETY <ul style="list-style-type: none"> • Side Impact Beams • Tire Specific Low Tire Pressure Warning • Dual Stage Driver And Passenger Front Airbags • Curtain 1st And 2nd Row Airbags • Airbag Occupancy Sensor • Rear Child Safety Locks • Outboard Front Lap And Shoulder Safety Belts -inc: Rear Center 3 Point, Height Adjusters and Pretensioners 																																																	

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Year: 2015 Make: Porsche Model: Boxster 2dr Roadster VIN: WPOCB2A82FS140488	Engine: Flat 6 Cylinder Engine Transmission: 6-SPEED MANUAL W/OVERDRIVE Exterior: White Interior: Black
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<p>MECHANICAL</p> <ul style="list-style-type: none"> • Rear-Wheel Drive • 3.89 Axle Ratio • 70-Amp/Hr 340CCA Maintenance-Free Battery • 120 Amp Alternator • 3649# Gvwr 739# Maximum Payload • Gas-Pressurized Shock Absorbers • Front And Rear Anti-Roll Bars • Electric Power-Assist Speed-Sensing Steering • 16.9 Gal. Fuel Tank • Strut Front Suspension w/Coil Springs • Strut Rear Suspension w/Coil Springs • 4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist, Hill Hold Control and Electric Parking Brake <p>EXTERIOR</p> <ul style="list-style-type: none"> • Wheels w/Locks • Spare Tire Mobility Kit • Clearcoat Paint • Body-Colored Rear Bumper w/Black Rub Strip/Fascia Accent • Black Side Windows Trim and Black Front Windshield Trim • Body-Colored Door Handles • Body-Colored Power Heated Side Mirrors w/Manual Folding • Fixed Rear Window w/Defroster • Light Tinted Glass • Front Windshield -inc: Sun Visor Strip • Galvanized Steel/Aluminum Panels • Trunk Rear Cargo Access • Front And Rear Fog Lamps • Perimeter/Approach Lights • LED Brakelights <p>ENTERTAINMENT</p> <ul style="list-style-type: none"> • Radio w/Compatible Remote CD, Clock and Speed Compensated Volume Control • Audio Theft Deterrent • Window Grid Diversity Antenna • 7 Speakers • Regular Amplifier • Bluetooth Wireless Phone Connectivity <p>INTERIOR</p> <ul style="list-style-type: none"> • Front Cupholder 	<ul style="list-style-type: none"> • Valet Function • Power Fuel Flap Locking Type • Remote Releases -Inc: Power Cargo Access • HomeLink Garage Door Transmitter • Cruise Control • Illuminated Locking Glove Box • Driver Foot Rest • Full Cloth Headliner • Leather Door Trim Insert w/Carpet Lower • Day-Night Rearview Mirror • Driver And Passenger Visor Vanity Mirrors w/Driver And Passenger Illumination • Full Floor Console w/Locking Storage and 3 12V DC Power Outlets • Fade-To-Off Interior Lighting • Carpet Floor Trim • Cargo Features -inc: Spare Tire Mobility Kit • Cargo Space Lights • FOB Controls -inc: Trunk/Hatch/Tailgate and Sunroof/Convertible Roof • Interior Concealed Storage, Driver And Passenger Door Bins • Power 1st Row Windows w/Driver And Passenger 1-Touch Down • Systems Monitor • Redundant Digital Speedometer • Outside Temp Gauge • Analog Display • Fixed Front Head Restraints • Front Center Armrest • Perimeter Alarm • 3 12V DC Power Outlets • Air Filtration <p>SAFETY</p> <ul style="list-style-type: none"> • Side Impact Beams • Dual Stage Driver And Passenger Seat-Mounted Side Airbags • Tire Specific Low Tire Pressure Warning • Dual Stage Driver And Passenger Front Airbags • Curtain 1st Row Airbags • Airbag Occupancy Sensor • Outboard Front Lap And Shoulder Safety Belts -inc: Pretensioners 	<p>New</p> <table border="1"> <tr> <td>MSRP</td> <td style="text-align: right;">\$65,810.00</td> </tr> <tr> <td colspan="2">INSTALLED OPTIONS</td> </tr> <tr> <td>[423] Wheels: FR 8 J X 20 & RR 9.5 J X 20 Carrera S Alloy</td> <td style="text-align: right;">\$1,560</td> </tr> <tr> <td>[00] White</td> <td style="text-align: right;">\$0</td> </tr> <tr> <td>[P06] 14 Way Electric Sport Seats W/Memory Package</td> <td style="text-align: right;">\$2,320</td> </tr> <tr> <td>[AG] Black, Partial Leather Seat Trim</td> <td style="text-align: right;">\$0</td> </tr> <tr> <td>[P9B] Premium Package W/Sport Seats</td> <td style="text-align: right;">\$1,170</td> </tr> <tr> <td>[P9G] Infotainment Package W/Bose Surround Sound System</td> <td style="text-align: right;">\$3,990</td> </tr> <tr> <td>[658] Power Steering Plus</td> <td style="text-align: right;">\$270</td> </tr> <tr> <td>[603] Bi Xenon Lighting System</td> <td style="text-align: right;">\$690</td> </tr> <tr> <td>[844] Leather Multifunction Steering Wheel</td> <td style="text-align: right;">\$615</td> </tr> <tr> <td>[583] Smoking Package</td> <td style="text-align: right;">\$0</td> </tr> <tr> <td>[250] Porsche Doppelkupplung (PDK)</td> <td style="text-align: right;">\$995</td> </tr> <tr> <td>Original Shipping Charge</td> <td style="text-align: right;">\$995</td> </tr> <tr> <td>RETAIL PRICE (ORIGINALLY NEW)</td> <td style="text-align: right;">\$77,420.00</td> </tr> </table> <p style="text-align: center;">Get more information on your smartphone:</p> 	MSRP	\$65,810.00	INSTALLED OPTIONS		[423] Wheels: FR 8 J X 20 & RR 9.5 J X 20 Carrera S Alloy	\$1,560	[00] White	\$0	[P06] 14 Way Electric Sport Seats W/Memory Package	\$2,320	[AG] Black, Partial Leather Seat Trim	\$0	[P9B] Premium Package W/Sport Seats	\$1,170	[P9G] Infotainment Package W/Bose Surround Sound System	\$3,990	[658] Power Steering Plus	\$270	[603] Bi Xenon Lighting System	\$690	[844] Leather Multifunction Steering Wheel	\$615	[583] Smoking Package	\$0	[250] Porsche Doppelkupplung (PDK)	\$995	Original Shipping Charge	\$995	RETAIL PRICE (ORIGINALLY NEW)	\$77,420.00
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105. In addition to the Monroney labels, Defendants advertised the Class Vehicles and otherwise supplied consumers with misinformation about them—including exaggerated fuel economy statistics—through various public-facing channels.

106. Brochures for the Class Vehicles—all of which, like the Monroney labels, include falsely-inflated fuel economy ratings—misleadingly emphasize fuel efficiency and/or

1 environmental cleanliness without the disclosing the truth about the laboratory and real-world
 2 contradictions therein.

3 107. The brochure for the 2016 Cayenne S serves as a representative example. It
 4 promises “impressive fuel economy” and the “perfect balance between output and efficiency,”
 5 noting that the Cayenne features “something quite special: enhanced power with greater fuel
 6 economy.” Per the brochure, the 2016 Cayenne features a “significant decrease in fuel
 7 consumption” from its predecessor. As to the environment, it affirms that “[e]cological
 8 responsibility is nothing new for Porsche” where “all technological developments are carried out
 9 with environmental protection in mind,” and explains that “even high-performance sports cars can
 10 achieve comparatively moderate exhaust emission values.” Finally, the brochure includes a
 11 detailed chart specifying the fuel consumption ratings for each Cayenne subtype.

	2016 Cayenne Turbo S	2016 Cayenne Turbo	2016 Cayenne GTS	2016 Cayenne S E-Hybrid
Estimated EPA fuel economy				
Fuel grade	Premium	Premium	Premium	Premium
City	14	19	16	21
Highway	21	24	23	24
Combined	17	21	19	22
Electricity consumption (combined)	-	-	-	47 MPGe
Typical electric range in everyday driving	-	-	-	-

20 108. The brochure for the 2011 Cayenne similarly illustrates the types of representations
 21 made to consumers in the Class Vehicle brochures. The brochure includes a two-page spread on the
 22 environment, emphasizing Porsche’s goal of “reducing excess, waste and inefficiency.” On exhaust
 23 emissions, it describes “effective emissions control” based in part on using an “optimal amount of
 24 fuel.” And as to fuel economy, it details how the 2011 Cayenne is “increasing performance while
 25 enhancing fuel economy.” An image of the spread is included in full below, along with magnified
 26 excerpts of the paragraphs cited herein for reference.

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Reducing excess, waste and inefficiency has always been our goal.

Environment.

Since the beginning, the concept behind every Porsche has been to create the most, using the least. We are continually striving to gain performance by eliminating excess.

This is achieved by using advanced engine concepts featuring technologies such as DFI (p. 28), VarioCam Plus (p. 27), the Auto Start Stop function (p. 25), the parallel full hybrid system, and consistent lightweight construction.

Weight reduction is a key aspect of our design philosophy, derived from our rich racing heritage. Part of our R&D Center, the Motorsport Department is located in Weissach, where it shares premises with the German Automotive Industry

Exhaust Emissions Center. Just a coincidence? We call it symbiosis.

In practice: The new Cayenne is up to 408 pounds lighter, depending on the model. This was achieved through new weight-saving developments and materials, new production technologies, advanced functionalities and concept modifications. By using lighter

materials, for example, we cut the weight of the tailgate in half. New materials are also a feature of the axle construction, with steel being replaced where possible by lightweight alternatives such as aluminum and plastic.



Porsche engines. Performing for today—and the future.

Exhaust emissions.

Whatever the class, every Porsche combines high performance with comparatively moderate emissions. On the new Cayenne models, this is achieved using advanced drive concepts—from Direct Fuel

Injection (DFI) gasoline engines to our new parallel full hybrid system. This is further aided by the rapid warm-up cycle of the catalytic converters. The optimal operating temperature is reached earlier so emissions are reduced sooner when starting from cold.

On the gasoline-engine and hybrid models, another important feature is the use of twin oxygen-sensor circuits. Each bank of cylinders has a separate control system, which the engine management system uses to establish the optimal amount of fuel—to r effective emissions control.



Fuel and fuel economy.

Increasing performance while enhancing fuel economy. The new Cayenne range offers two different drive systems, each featuring state-of-the-art technology for high efficiency and relatively low fuel consumption. The gasoline engine models already operate on fuels with an ethanol content of up to 10 percent.

This further improves the carbon dioxide balance since the plants grown for the production of biofuels absorb carbon dioxide from the atmosphere. As you can see, for the benefit of the environment, we are continually working on making our cars more efficient—as well as compatible with alternative fuels. While ensuring that they remain one thing: a thoroughbred Porsche.

Fuel system.

We have also applied the highest standards in order to protect the environment from fuel evaporation. The non-return fuel supply system provides a considerable reduction in vapor emissions. The lines carrying vapor are made from multilayer plastics. A large active-carbon filter and multilayer plastic fuel tank help reduce evaporation still further.



Standard on the Cayenne, Cayenne S, Cayenne S Hybrid and Cayenne Turbo.

Safety and environment | Environment - 63

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<p>Exhaust emissions.</p> <p>Whatever the class, every Porsche combines high performance with comparatively moderate emissions. On the new Cayenne models, this is achieved using advanced drive concepts—from Direct Fuel</p>	<p>Injection (DFI) gasoline engines to our new parallel full hybrid system. This is further aided by the rapid warm-up cycle of the catalytic converters. The optimal operating temperature is reached earlier so emissions are reduced sooner when starting from cold.</p>	<p>On the gasoline-engine and hybrid models, another important feature is the use of twin oxygen-sensor circuits. Each bank of cylinders has a separate control system, which the engine management system uses to establish the optimal amount of fuel—for effective emissions control.</p>
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<p>Fuel and fuel economy.</p> <p>Increasing performance while enhancing fuel economy. The new Cayenne range offers two different drive systems, each featuring state-of-the-art technology for high efficiency and relatively low fuel consumption. The gasoline engine models already operate on fuels with an ethanol content of up to 10 percent.</p>	<p>This further improves the carbon dioxide balance since the plants grown for the production of biofuels absorb carbon dioxide from the atmosphere. As you can see, for the benefit of the environment, we are continually working on making our cars more efficient—as well as compatible with alternative fuels. While ensuring that they remain one thing: a thoroughbred Porsche.</p>
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109. Brochures for other Class Vehicles use similar language to send a misleading message of fuel efficiency and environmental protection. Illustrative examples are described below.

a. The 2008 brochure for the Cayenne touts its “impressive fuel economy” and claims that its “engine management system works its silent magic to help reduce emissions at the source” and to “ensure Cayenne complies with all emissions legislation.” The same brochure explains that “Porsche engineers have proven it’s not necessary to decrease fuel efficiency in order to increase performance” and that Cayenne provides a “significant increase in fuel efficiency and a reduction of exhaust emissions.”

1 b. The brochure for the 2010 911 Turbo and Turbo S affirms that the “911
2 Turbo and Turbo S models comply with stringent emissions standards” which makes them “not
3 just extremely exciting sports cars, but very clean ones too.”

4 c. The 2011 Cayenne brochure assures that it is “more fuel-efficient than ever
5 before.” Per the brochure, Cayenne provides “optimal fuel economy and lower CO2 emissions,
6 as well as greater power and torque at all times.”

7 d. The 2011 brochure for the 911 similarly touts “lower fuel consumption and
8 reduced emissions.”

9 e. The 2012 brochure for the Cayman promises “resolute compliance with the
10 environmental regulations” and continues that “efficiency, too, is a question of character.” As it
11 further explains, the Cayman reflects the goal of “performance—but not at the expense of the
12 environment.”

13 f. The 2012 Boxster brochure describes a “commitment to high power with
14 comparatively low fuel consumption and emissions figures” meaning that even Porsche’s
15 “high-performance sports cars can achieve moderate fuel consumption and exhaust emissions
16 values in their respective categories.” The same brochure further sets out that while “[e]very
17 automotive manufacturer must ask itself what it has to offer in terms of reducing environmental
18 impact,” for Porsche, the answer is purportedly “high efficiency,” including that it “managed to
19 reduce fuel consumption across all model ranges by a double digit percentage.” The brochure for
20 the 2012 Panamera assures consumers that Porsche was “achieving the lowest CO₂ emissions”
21 through “efficient engine technologies.”

22 g. The brochure for the 2012 911 expresses Porsche’s “concern” about “global
23 climate change and CO₂ emissions” and emphasizes that the vehicle engines were “developed
24 with new efficiency-enhancing technologies . . . that reduce fuel consumption.”

25 h. The 2013 Cayenne brochure similarly describes “greater efficiency in fuel
26 consumption.” Indeed, it notes that all gasoline-powered Cayennes purportedly offer a
27 “significant increase in power and torque as well as better fuel economy and lower emissions.”
28 On the environment, Porsche explains it is “continually striving” to find a “successful balance”

1 between performance and efficiency, and through new technologies in the Cayenne, it has
2 achieved “efficiency at its best.” Further, because Cayenne is “equipped with the latest
3 emissions technology,” all models “comply with U.S. EPA standards.”

4 i. The brochure for the 2013 Panamera suggests that “performance and
5 efficiency need not be mutually exclusive” and details the “highly efficient, state-of-the-art
6 engines” that lead to “comparatively low fuel consumption” while maintaining a sound that is
7 “still unmistakably Porsche.”

8 j. The 2014 brochure for the 911 notes that its “refined engine” will “consume
9 less fuel.” A multi-page spread in that brochure about “Porsche and the environment” explains
10 that “we’ve defined the 911 in terms of sporty performance. And we’ve scrutinized it daily for its
11 efficiency-enhancing potential.”

12 k. The 2014 brochure for the Panamera emphasizes “[c]onserving fuel.
13 Without cutting back on adrenaline” and features “improved fuel efficiency” explaining that
14 “turbocharging isn’t just about increased power. It’s about enhanced efficiency” including
15 “lower fuel consumption.”

16 l. A 2015 brochure describes the 911 to be “[n]ot at thirsty as you might think”
17 and likewise touts its “comparatively low fuel consumption” and “high power output” achieved
18 in an “environmentally acceptable and sustainable way.”

19 m. The 2016 Boxster brochure addresses the “environment” and the
20 “intensifying debate about global climate change and CO₂ emissions.” On these issues, it
21 declares that “fair play” is a “sporting essential” and promises “excellent performance together
22 with excellent efficiency” and “efficient emissions control.”

23 n. The brochure for the 2016 911 describes “fuel consumption and CO₂
24 emissions” that are “remarkably low.”

25 o. The 2017 Cayenne brochure likewise describes “comparatively low fuel
26 consumption” and notes that “ecological responsibility is nothing new for Porsche” meaning that
27 “even high-performance sports cars can achieve comparatively moderate exhaust emission
28 values.”

1 110. The Defendants also similarly featured the Class Vehicles’ fuel economy and
2 supposedly clean emissions in other consumer-facing marketing materials.

3 a. A January 25, 2010 Press Release at the launch of the 2010 Porsche 911
4 Turbo notes a “13 percent increase in fuel economy” making it a “more efficient” vehicle.

5 b. An April 22, 2010 Press Release for the “New Porsche Panamera” boasts of
6 “more performance on less fuel, increased efficiency and lower CO₂ emissions.”

7 c. A June 4, 2010 Press Release for the launch of the Panamera and Panamera 4
8 promises “even better fuel economy” where the “Panamera achieves 18 mpg city/27 highway” and
9 the Panamera 4 “delivers 18 mpg city/26 highway, numbers that are no doubt appealing to
10 consumers who demand driving excitement and fuel efficiency.”

11 d. An October 27, 2010 Press Release titled “Cayenne Proves Porsche’s Goal
12 of Better Fuel Economy” notes that the “New SUV Sees Significant Fuel Savings.” As it describes,
13 through the “Porsche Intelligent Performance” philosophy, the Cayenne offers “more power with
14 lower consumption increased efficiency, and reduced CO₂ emissions.”

15 e. A February 6, 2012, Press Release for the 911 Carrera and Carrera S said
16 that “[f]or 2012, the 911 has been completely redesigned from the ground up. The newest
17 incarnation applies singular balance to the priorities of a new era, preserving the classic 911 lines,
18 yet revisiting every inch for advances in power and fuel economy.”

19 f. A page available on the Porsche USA website (www.porsche.com/usa) on
20 September 5, 2015 regarding “fuel economy and recycling” for the 911 Carrera features “low fuel
21 consumption values in conjunction with outstanding performance” as well “efficient emission
22 control.”

23 g. A January 27, 2016 Press Release for the Boxster notes that the new models
24 are “now more powerful yet more fuel efficient” with “fuel economy improvements of up to 13
25 percent.”

26 h. In an “Environmental Statement” for 2016-2017 entitled “taking our
27 responsibilities seriously,” Porsche detailed its purported commitment to “reducing carbon
28

1 dioxide” in its vehicles and boasted that it “goes without saying that Porsche meets all applicable
2 environmental regulations.”

3 i. A Press Kit issued at the production anniversary of the 911 (at the
4 production of the one millionth 911 in May 2017) explains that 911s “set the bar yet another notch
5 higher in terms both of performance and efficiency” with “lower fuel consumption and even more
6 power.”

7 111. As these and other marketing materials reflect, Porsche sought to cater to
8 increasingly eco-conscious consumers and to align its brand—including the Class Vehicles—with
9 a commitment to the environment and efficient use of resources.

10 112. These efforts are also reflected throughout a February 18, 2013 interview with
11 Porsche’s Board of Management member, Wolfgang Hatz, by the consumer website, Driving the
12 Nation. In that interview, Mr. Hatz assured the public that “[t]hinking ‘green’ is not a trend at
13 Porsche; it is a way of conducting business.” He further affirmed that that Porsche “has *always*
14 *complied with statutory legal requirements* and has, in fact, done so by a comfortable margin”
15 including through “eco-friendly” initiatives like “lowering fuel consumptions, and further reducing
16 emissions of pollutants and CO2” (emphasis added). At that time, he noted that Porsche had
17 “succeeded in reducing fuel consumption in its new cars, and thereby also CO2 emissions” as part
18 of their mission to “develop, produce, sell and service fascinating, high-quality, exclusive sports
19 cars that meet the highest possible standards of environmental . . . engineering.”

20 113. As described throughout this Complaint, these statements and those detailed above
21 about Porsche and the Class Vehicles’ emissions and fuel economy were not true.

22 * * *

23 114. Defendants’ deceptive actions harmed Plaintiffs and the Class. As a result of
24 Defendants’ unfair, deceptive, and/or fraudulent business practices, and failure to disclose that the
25 Class Vehicles were designed to mislead consumers about the vehicles’ true emissions levels and
26 fuel economy, owners and lessees of the Class Vehicles have suffered losses in money and/or
27 property. Plaintiffs have suffered damages as a result their purchases of the Class Vehicles,
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1 including but not limited to payment for additional fuel costs required by the lower fuel economy
2 performance in their Vehicles.

3 **VII. CLASS ACTION ALLEGATIONS**

4 115. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rules of Civil
5 Procedure 23(a), (b)(1), (b)(2), (b)(3), and/or (c)(4), on behalf of themselves and all others similarly
6 situated as members of the following Nationwide Class and State Classes (collectively, the
7 “Classes”).

8 116. The proposed Classes are defined as:

9 **Nationwide Class**

10 All persons and entities in the United States, including its territories,
11 who purchased or leased a Class Vehicle.

12 **Alabama State Class**

13 All persons and entities in the state of Alabama who purchased or
14 leased a Class Vehicle.

15 **Alaska State Class**

16 All persons and entities in the state of Alaska who purchased or
17 leased a Class Vehicle.

18 **Arizona State Class**

19 All persons and entities in the state of Arizona who purchased or
20 leased a Class Vehicle.

21 **Arkansas State Class**

22 All persons and entities in the state of Arkansas who purchased or
23 leased a Class Vehicle.

24 **California State Class**

25 All persons and entities in the state of California who purchased or
26 leased a Class Vehicle.

27 **Colorado State Class**

28 All persons and entities in the state of Colorado who purchased or
29 leased a Class Vehicle.

Connecticut State Class

All persons and entities in the state of Connecticut who purchased or

1 leased a Class Vehicle.

2 **Delaware State Class**

3 All persons and entities in the state of Delaware who purchased or
4 leased a Class Vehicle.

5 **District of Columbia Class**

6 All persons and entities in the District of Columbia who purchased or
7 leased a Class Vehicle.

8 **Florida State Class**

9 All persons and entities in the state of Florida who purchased or
10 leased a Class Vehicle.

11 **Georgia State Class**

12 All persons and entities in the state of Georgia who purchased or
13 leased a Class Vehicle.

14 **Hawaii State Class**

15 All persons and entities in the state of Hawaii who purchased or
16 leased a Class Vehicle.

17 **Idaho State Class**

18 All persons and entities in the state of Idaho who purchased or leased
19 a Class Vehicle.

20 **Illinois State Class**

21 All persons and entities in the state of Illinois who purchased or
22 leased a Class Vehicle.

23 **Indiana State Class**

24 All persons and entities in the state of Indiana who purchased or
25 leased a Class Vehicle.

26 **Iowa State Class**

27 All persons and entities in the state of Iowa who purchased or leased
28 a Class Vehicle.

Kansas State Class

All persons and entities in the state of Kansas who purchased or
leased a Class Vehicle.

Kentucky State Class

All persons and entities in the state of Kentucky who purchased or

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leased a Class Vehicle.

Louisiana State Class

All persons and entities in the state of Louisiana who purchased or leased a Class Vehicle.

Maine State Class

All persons and entities in the state of Maine who purchased or leased a Class Vehicle.

Maryland State Class

All persons and entities in the state of Maryland who purchased or leased a Class Vehicle.

Massachusetts State Class

All persons and entities in the state of Massachusetts who purchased or leased a Class Vehicle.

Michigan State Class

All persons and entities in the state of Michigan who purchased or leased a Class Vehicle.

Minnesota State Class

All persons and entities in the state of Minnesota who purchased or leased a Class Vehicle.

Mississippi State Class

All persons and entities in the state of Mississippi who purchased or leased a Class Vehicle.

Missouri State Class

All persons and entities in the state of Missouri who purchased or leased a Class Vehicle.

Montana State Class

All persons and entities in the state of Montana who purchased or leased a Class Vehicle.

Nebraska State Class

All persons and entities in the state of Nebraska who purchased or leased a Class Vehicle.

Nevada State Class

All persons and entities in the state of Nevada who purchased or

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leased a Class Vehicle.

New Hampshire State Class

All persons and entities in the state of New Hampshire who purchased or leased a Class Vehicle.

New Jersey State Class

All persons and entities in the state of New Jersey who purchased or leased a Class Vehicle.

New Mexico State Class

All persons and entities in the state of New Mexico who purchased or leased a Class Vehicle.

New York State Class

All persons and entities in the state of New York who purchased or leased a Class Vehicle.

North Carolina State Class

All persons and entities in the state of North Carolina who purchased or leased a Class Vehicle.

North Dakota State Class

All persons and entities in the state of North Dakota who purchased or leased a Class Vehicle.

Ohio State Class

All persons and entities in the state of Ohio who purchased or leased a Class Vehicle.

Oklahoma State Class

All persons and entities in the state of Oklahoma who purchased or leased a Class Vehicle.

Oregon State Class

All persons and entities in the state of Oregon who purchased or leased a Class Vehicle.

Pennsylvania State Class

All persons and entities in the state of Pennsylvania who purchased or leased a Class Vehicle.

Rhode Island State Class

All persons and entities in the state of Rhode Island who purchased

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or leased a Class Vehicle.

South Carolina State Class

All persons and entities in the state of South Carolina who purchased or leased a Class Vehicle.

South Dakota State Class

All persons and entities in the state of South Dakota who purchased or leased a Class Vehicle.

Tennessee State Class

All persons and entities in the state of Tennessee who purchased or leased a Class Vehicle.

Texas State Class

All persons and entities in the state of Texas who purchased or leased a Class Vehicle.

Utah State Class

All persons and entities in the state of Utah who purchased or leased a Class Vehicle.

Vermont State Class

All persons and entities in the state of Vermont who purchased or leased a Class Vehicle.

Virginia State Class

All persons and entities in the state of Virginia who purchased or leased a Class Vehicle.

Washington State Class

All persons and entities in the state of Washington who purchased or leased a Class Vehicle.

West Virginia State Class

All persons and entities in the state of West Virginia who purchased or leased a Class Vehicle.

Wisconsin State Class

All persons and entities in the state of Wisconsin who purchased or leased a Class Vehicle.

Wyoming State Class

All persons and entities in the state of Wyoming who purchased or

1 leased a Class Vehicle.

2 117. Excluded from the Classes are:

3 a. Defendants' officers, directors and employees and participants in
4 Volkswagen's Internal Lease Program, and/or Porsche Associate Lease Program; Defendants'
5 affiliates and affiliates' officers, directors and employees; Defendants' distributors and distributors'
6 officers, directors and employees; and

7 b. Judicial officers and their immediate family members and associated court
8 staff assigned to this case.

9 118. The proposed Nationwide Class includes all persons and entities that purchased or
10 leased a Class Vehicle in the United States, including its territories.

11 119. Plaintiffs also propose separate State Classes for all fifty states, each of which
12 includes all persons and entities that purchased or leased a Class Vehicle in that state.

13 120. Excluded from the Classes are:

14 a. Defendants' officers, directors and employees and participants in the
15 Porsche Associate Lease Program; Defendants' affiliates and affiliates' officers, directors and
16 employees; Defendants' distributors and distributors' officers, directors and employees; and

17 b. Judicial officers and their immediate family members and associated court
18 staff assigned to this case.

19 121. Plaintiffs reserve the right to amend the Class definitions if discovery and further
20 investigation reveal that any Class should be expanded, reduced, divided into additional subclasses
21 under Rule 23(c)(5), or modified in any other way.

22 122. Certification of Plaintiffs' claims for class-wide treatment is appropriate because
23 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
24 would be used in individual actions alleging the same claims.

25 123. This action has been brought and may be properly maintained on behalf of each of
26 the Classes proposed herein under Federal Rule of Civil Procedure 23 and satisfies the numerosity,
27 commonality, typicality, adequacy, predominance, and superiority requirements of its provisions.

28

1 **A. Numerosity: Federal Rule of Civil Procedure 23(a)(1)**

2 124. The members of the Class are so numerous and geographically dispersed that
3 individual joinder of all Class members is impracticable. Plaintiffs are informed and believe that
4 there are hundreds of thousands of members of the Class, and at least hundreds of members in each
5 State Class. The precise number and identities of Nationwide Class and State Class members may
6 be ascertained from Defendants' records and motor vehicle regulatory data. Class members may be
7 notified of the pendency of this action by recognized, Court-approved notice dissemination
8 methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

9 **B. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2)**
10 **and 23(b)(3)**

11 125. This action involves common questions of law and fact, which predominate over
12 any questions affecting individual Class members, including, without limitation:

- 13 a. Whether Defendants engaged in the conduct alleged herein;
- 14 b. Whether Defendants designed, advertised, marketed, distributed, leased,
15 sold, or otherwise placed Class Vehicles into the stream of commerce in the United States;
- 16 c. Whether the Class Vehicles were affected by the Axle Ratio and Sport Plus
17 defects, as described herein;
- 18 d. Whether Defendants' conduct violates consumer protection statutes,
19 warranty laws, and other laws as asserted herein;
- 20 e. Whether Plaintiffs and the other Class members are entitled to equitable
21 relief, including, but not limited to, restitution or injunctive relief; and
- 22 f. Whether Plaintiffs and the other Class members are entitled to damages and
23 other monetary relief and, if so, in what amount.

24 **C. Typicality: Federal Rule of Civil Procedure 23(a)(3)**

25 126. Plaintiffs' claims are typical of the claims of the Class members whom they seek to
26 represent under Fed. R. Civ. P. 23(a)(3), because Plaintiffs and each Class member purchased or
27 leased a Class Vehicle and were comparably injured through Defendants' wrongful conduct as
28 described above. Plaintiffs and the other Class members suffered damages as a direct proximate

1 result of the same wrongful practices by Defendants. Plaintiffs' claims arise from the same
2 practices and courses of conduct that give rise to the claims of the other Class members. Plaintiffs'
3 claims are based upon the same legal theories as the claims of the other Class members.

4 **D. Adequacy: Federal Rule of Civil Procedure 23(a)(4)**

5 127. Plaintiffs will fairly and adequately represent and protect the interests of the Class
6 members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs' interests do not conflict with the
7 interests of the Class members. Plaintiffs have retained counsel competent and experienced in
8 complex class action litigation, including vehicle emissions litigation and other consumer
9 protection litigation. Plaintiffs intend to prosecute this action vigorously. Neither Plaintiffs nor
10 their counsel have interests that conflict with the interests of the other Class members. Therefore,
11 the interests of the Class members will be fairly and adequately protected.

12 **E. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)**

13 128. Defendants have acted or refused to act on grounds generally applicable to Plaintiffs
14 and the other members of the Class, thereby making appropriate final injunctive relief and
15 declaratory relief, as described below, with respect to the Class as a whole.

16 **F. Superiority: Federal Rule of Civil Procedure 23(b)(3)**

17 129. A class action is superior to any other available means for the fair and efficient
18 adjudication of this controversy, and no unusual difficulties are likely to be encountered in its
19 management. The damages or other financial detriment suffered by Plaintiffs and the other Class
20 members are relatively small compared to the burden and expense that would be required to
21 individually litigate their claims against Defendants such that it would be impracticable for
22 members of the Class to individually seek redress for Defendants' wrongful conduct.

23 130. Even if Class members could afford individual litigation, the court system could not.
24 Individualized litigation creates a potential for inconsistent or contradictory judgments, and
25 increases the delay and expense to all parties and the court system. By contrast, the class action
26 device presents far fewer management difficulties and provides the benefits of single adjudication,
27 economy of scale, and comprehensive supervision by a single court.
28

1 **VIII. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED**

2 **A. Discovery Rule Tolling**

3 131. For the following reasons, any otherwise-applicable statutes of limitation have been
4 tolled by the discovery rule with respect to all claims.

5 132. Through the exercise of reasonable diligence, and within any applicable statutes of
6 limitation, Plaintiffs and members of the proposed Class could not have discovered that Defendants
7 were concealing and misrepresenting the Class Vehicles' true emissions and fuel efficiency levels,
8 including but not limited to their use of altered testing vehicles, a secret clean operating mode that
9 is not used for real-world driving but is activated only during testing, and falsely attesting that Sport
10 Plus Mode complies with applicable emissions regulations.

11 133. Plaintiffs and the other Class members could not have reasonably discovered, and
12 did not know of facts that would have caused a reasonable person to suspect, that Defendants
13 intentionally failed to report information within their knowledge to federal and state authorities,
14 dealerships, or consumers until—at the earliest—August 22, 2020, when published reports
15 surfaced for the first time disclosing the existence of the emissions and fuel economy defects in the
16 Class Vehicles. Plaintiffs did not discover Defendants' deception and unlawful conduct until after
17 August 22, 2020 upon reviewing media reports and/or learning of their counsel's investigation.

18 134. Likewise, a reasonable and diligent investigation would not have disclosed that
19 Defendants had information in their possession about the existence of its sophisticated emissions
20 and fuel economy deception and that they concealed that information, which Plaintiffs only
21 discovered shortly before this action was filed.

22 **B. Tolling Due to Fraudulent Concealment**

23 135. Throughout the relevant time period, all applicable statutes of limitation have been
24 tolled by Defendants' knowing and active fraudulent concealment and denial of the facts alleged in
25 this Complaint.

26 136. Upon information and belief, prior to the date of this Complaint, and at least as early
27 as September 2015, if not earlier, Defendants knew of the emissions and fuel economy defects in
28 certain Class Vehicles, but continued to distribute, sell, and/or lease the Class Vehicles to Plaintiffs

1 and the class members. In so doing, Defendants concealed and/or failed to notify Plaintiffs and the
2 Class members about the true nature of the Class Vehicles.

3 137. Instead of disclosing their deception, or that the emissions and fuel economy from
4 the Class Vehicles were worse than represented, Defendants falsely represented the Class Vehicles'
5 true emissions and fuel economy.

6 138. Any otherwise-applicable statutes of limitation have therefore been tolled by
7 Defendants' exclusive knowledge and active concealment of the facts alleged herein.

8 **C. Estoppel**

9 139. Defendants were and are under a continuous duty to disclose to Plaintiffs and Class
10 members the true character, quality, and nature of the Class Vehicles, including their fuel economy,
11 emissions systems, and their compliance with applicable federal and state law.

12 140. Although Defendants had the duty throughout the relevant period to disclose to
13 Plaintiffs and Class members that they had engaged in the deception described in this Complaint,
14 Defendants did not actively disclose true fuel economy and emissions statistics and did not correct
15 their disclosures with respect to the Class Vehicles, actively concealed the true character, quality,
16 and nature of the Class Vehicles, and made misrepresentations about the quality, reliability,
17 characteristics, and/or performance of the Class Vehicles.

18 141. Defendants actively concealed the true character, quality, performance, and nature
19 of the emission and fuel economy defects in the Class Vehicles, and Plaintiffs and the class
20 members reasonably relied upon Defendants' knowing and active concealment of these facts.

21 142. Based on the foregoing, Defendants are estopped from relying on any statutes of
22 limitations in defense of this action.

23 **IX. CAUSES OF ACTION**

24 **A. Claims Asserted on Behalf of the Nationwide Class**

**NATIONWIDE COUNT I:
FRAUD BY CONCEALMENT
(Common Law)**

1
2
3 143. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
4 forth herein.

5 144. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class or, in
6 the alternative, on behalf of the State Classes, against all Defendants.

7 145. Defendants are liable for both fraudulent concealment and non-disclosure. *See, e.g.*,
8 Restatement (Second) of Torts §§ 550-51 (1977).

9 146. Specifically, Defendants committed fraud by submitting testing vehicles that were
10 materially different from production vehicles, attesting that the high performance Sport Plus mode
11 complied with applicable emissions laws, and concealing all of this information from regulators,
12 Plaintiffs and the Class.

13 147. A reasonable consumer would not have expected that the Class Vehicles they paid
14 for and drove were materially different from the testing-only vehicles used to obtain permission to
15 sell the vehicles and did not comply with emissions laws when operated in Sport Plus mode.

16 148. Defendants knew that these facts about the Class Vehicles would be important to the
17 consumers deciding to purchase or lease them. Defendants ensured that Plaintiffs and the Class did
18 not discover this information through actively concealing it. Defendants intended for Plaintiffs and
19 the Class to rely on their omissions—which they did by paying for the Class Vehicles.

20 149. Defendants had a duty to disclose the emissions and fuel economy defects and that
21 the Class Vehicles consumed more fuel and emitted higher levels of harmful pollutants during
22 normal driving operation. These important facts were known and/or accessible only to the
23 Defendants, including due to their involvement in the design, installment, and calibration of the
24 hardware. Defendants also knew that these technical facts were not known to or reasonably
25 discoverable by Plaintiffs and the Class. If Defendants had disclosed these material facts, Plaintiffs
26 would have seen them.

27 150. Defendants also had a duty to disclose the true nature of the Class Vehicles in light
28 of their affirmative statements about the Class Vehicles with respect to emissions standards, fuel

1 efficiency and performance. In uniform advertising and materials provided with each Class
2 Vehicle, Defendants intentionally concealed, suppressed, and failed to disclose to Plaintiffs and the
3 Class that the Class Vehicles were equipped with emissions-cheating hardware that caused them to
4 obtain worse fuel economy and/or emit more pollution on the road than in regulatory testing.

5 151. Defendants knew these statements were misleading, deceptive, and incomplete
6 without the disclosure of the additional facts set forth above regarding the existence of the
7 emissions- and fuel economy-cheating fraud. Because they volunteered to provide information
8 about the Class Vehicles that they offered for sale to Plaintiffs and the Class, Defendants had the
9 duty to disclose the whole truth. They did not.

10 152. Defendants did not fulfill their duties to disclose to Plaintiffs and the Class. Instead,
11 they actively concealed the truth, including during the emissions certification process for the Class
12 Vehicles and throughout their marketing and sale of the Class Vehicles.

13 153. Defendants' deceptive actions harmed Plaintiffs and the Class. Because
14 Defendants' fraudulently concealed the truth about the Class Vehicles' fuel economy and
15 emissions characteristics, consumers who paid for the Class Vehicles suffered economic losses.
16 Plaintiffs suffered damages including but not limited to payment for additional fuel costs required
17 by the lower fuel economy performance in their Class Vehicles. Accordingly, Defendants are liable
18 to Plaintiffs and the Class for damages in an amount to be proven at trial.

19 154. Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with
20 intent to defraud; in reckless disregard of the rights of Plaintiffs and the Class; and to enrich
21 themselves. Their misconduct warrants an assessment of punitive damages in an amount sufficient
22 to deter such conduct in the future, which amount shall be determined according to proof at trial.

23 **NATIONWIDE COUNT II:**
24 **IMPLIED AND WRITTEN WARRANTY**
25 **Magnuson - Moss Warranty Act (15 U.S.C. §§ 2301, et seq.)**

26 155. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
27 forth herein.

28 156. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class against
all Defendants.

1 157. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by
2 virtue of 28 U.S.C. § 1332 (a)-(d).

3 158. Plaintiffs and Class members are “consumers” within the meaning of the
4 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

5 159. Defendants are “supplier[s]” and “warrantor[s]” within the meaning of the
6 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

7 160. The Class Vehicles are “consumer products” within the meaning of the
8 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

9 161. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged
10 by the failure of a warrantor to comply with a written or implied warranty.

11 162. Defendants provided Plaintiffs and the Nationwide Class with the following two
12 express warranties, which are covered under 15 U.S.C. § 2301(6):

13 a. **Manufacturer’s Warranty**—This written warranty provides
14 “bumper-to-bumper” limited express warranty coverage for a minimum of 4 years or 50,000 miles,
15 whichever comes first. The warranty covers emissions related repairs.

16 b. **Federal Emissions Warranty**—Consistent with federal law, the
17 Defendants provided a “performance warranty” and a “design and defect warranty.” In the event
18 that a vehicle fails an emissions test, these warranties cover the repair and replacement of: all
19 emission control and emission-related parts for two years or 24,000 miles (whichever comes first);
20 and specified major emission control components, including catalytic converters, electronic
21 emissions control unit or computer and on-board emissions diagnostic device or computer for 8
22 years or 80,000 miles (whichever comes first).

23 163. The Class Vehicles’ implied warranties are covered under 15 U.S.C. § 2301(7).

24 164. The terms of these warranties became part of the basis of the bargain when Plaintiffs
25 and each Class member purchased or leased their Class Vehicles.

26 165. Defendants breached these written and implied warranties as described in detail
27 above. Without limitation, the Class Vehicles share a common design defect in that they emit more
28 pollution and consume more fuel than disclosed to regulators, consumers, and the driving public.

1 166. Plaintiffs and each Class member have had sufficient direct dealings with either
2 Defendants or their agents (including dealerships) to establish privity of contract between
3 Defendants, on the one hand, and Plaintiffs and each Class member, on the other hand, as to the
4 express and implied warranties detailed in the Counts below.

5 167. Nonetheless, privity is not required here because Plaintiffs and each Class member
6 are intended third-party beneficiaries of contracts between Defendants and their dealers, and of
7 their implied warranties. The dealers were not intended to be the ultimate consumers of the Class
8 Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the
9 warranty agreements were designed for and intended to benefit consumers only.

10 168. Affording Defendants a reasonable opportunity to cure their breach of written
11 warranties would be unnecessary and futile. At the time of sale or lease of each Class Vehicle,
12 Defendants knew, or should have known, of their misrepresentations and/or material omissions
13 concerning the Class Vehicles' inability to perform as warranted, but nonetheless failed to rectify
14 the situation and/or disclose the design defect. Under the circumstances, the remedies available
15 under any informal settlement procedure would be inadequate and any requirement that Plaintiffs
16 or members of the Class resort to an informal dispute resolution procedure and/or afford
17 Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby
18 deemed satisfied.

19 169. In addition, given the conduct described herein, any attempts by Defendants, in their
20 capacity as warrantors, to limit the implied warranties in a manner that would exclude coverage of
21 the defect is unconscionable and any such effort to disclaim, or otherwise limit, liability for the
22 defect is null and void.

23 170. Plaintiffs and the other Class members would suffer economic hardship if they
24 returned their Class Vehicles, but did not receive the return of all payments they made to
25 Defendants. Because Defendants are refusing to acknowledge any revocation of acceptance and
26 have not immediately returned any payments made, Plaintiffs and the Class have not re-accepted
27 their Class Vehicles by retaining them.
28

1 171. The amount in controversy of Plaintiffs’ individual claims meets or exceeds the sum
2 of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest
3 and costs, computed on the basis of all claims to be determined in this lawsuit.

4 172. As a direct and proximate result of the Defendants’ breach of the written and
5 implied warranties, Plaintiffs and each Class member have suffered damages.

6 173. Plaintiffs, individually and on behalf of the Class, seek all damages permitted by
7 law, including compensation for the monetary difference between the Class Vehicles as warranted
8 and as sold or leased; compensation for the reduction in resale value; the cost of purchasing,
9 leasing, or renting replacement vehicles, along with all other incidental and consequential damages,
10 statutory attorney fees, and all other relief allowed by law.

11 **B. State-Specific Claims**

12 **ALABAMA COUNT I:**
13 **Violations of the Alabama Deceptive Trade Practices Act**
14 **Ala. Code § 8-19-1, *et seq.***
(On Behalf of the Alabama State Class)

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

17 175. Plaintiffs Frank Belle and Alan Essreg (for the purposes of this count, “Plaintiffs”)
18 bring this claim on behalf of themselves and the Alabama State Class against all Defendants.

19 176. Plaintiffs and Alabama State Class members are “consumers” within the meaning
20 of Ala. Code § 8-19-3(2).

21 177. Plaintiffs and Alabama State Class members and Defendants are “persons” within
22 the meaning of Ala. Code § 8-19-3(5).

23 178. The Class Vehicles are “goods” within the meaning of Ala. Code § 8-19-3(3).

24 179. Defendants were and are engaged in “trade or commerce” within the meaning of
25 Ala. Code § 8-19-3(8).

26 180. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several
27 specific actions to be unlawful, including: “(5) Representing that goods or services have
28 sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not

1 have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or that
2 goods are of a particular style or model, if they are of another,” and “(27) Engaging in any other
3 unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or
4 commerce.” Ala. Code § 8-19-5.

5 181. In the course of their business, Defendants concealed and suppressed material facts
6 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
7 emissions testing that were different from production vehicles, and/or (b) falsely attesting that
8 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
9 did not.

10 182. Plaintiffs and Alabama State Class members had no way of discerning that
11 Defendants’ representations were false and misleading because Plaintiffs and Alabama State Class
12 members did not have access to Defendants’ emissions certification test vehicles and Defendants’
13 emissions-related hardware was extremely sophisticated technology. Alabama State Class
14 members did not and could not unravel Defendants’ deception on their own.

15 183. Defendants thus violated the Alabama DTPA by, at minimum: representing that
16 Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;
17 representing that Class Vehicles are of a particular standard, quality, and grade when they are not;
18 advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing
19 that the subject of a transaction involving Class Vehicles has been supplied in accordance with a
20 previous representation when it has not.

21 184. Defendants intentionally and knowingly misrepresented material facts regarding the
22 Class Vehicles with intent to mislead the Alabama State Class.

23 185. Defendants knew or should have known that their conduct violated the Alabama
24 DTPA.

25 186. Defendants owed the Alabama State Class a duty to disclose the illegality and public
26 health risks, and the true nature of the Class Vehicles, because Defendants:

27 A. possessed exclusive knowledge that they were manufacturing, selling, and
28 distributing vehicles throughout the United States that did not perform as advertised;

1 B. intentionally concealed the foregoing from regulators and Alabama State
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles' fuel economy
4 and emissions while purposefully withholding material facts that contradicted these
5 representations.

6 187. Defendants' concealment of the Class Vehicles' true fuel consumption and
7 emissions was material to the Alabama State Class.

8 188. Defendants' unfair or deceptive acts or practices were likely to and did in fact
9 deceive regulators and reasonable consumers, including the Alabama Class, about the true
10 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of Defendants'
11 brands, and the true value of the Class Vehicles.

12 189. Plaintiffs and the Alabama State Class suffered ascertainable loss and actual
13 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
14 and failure to disclose material information.

15 190. Pursuant to Ala. Code § 8-19-10(e), Plaintiffs have sent notice letters to Defendants.
16 Additionally, Defendants are on notice of the issues raised in this count and this Complaint by way
17 of investigations conducted by governmental regulators. The Alabama State Class seeks all
18 damages and relief to which it is entitled.

19 **ALABAMA COUNT II:**
20 **Breach of Express Warranty**
21 **Ala. Code §§ 7-2-313 and 7-2A-210**
22 **(On Behalf of the Alabama State Class)**

23 191. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
24 fully set forth herein.

25 192. Plaintiffs Frank Belle and Alan Essreg (for the purposes of this count, "Plaintiffs")
26 bring this claim on behalf of themselves and the Alabama State Class against all Defendants.

27 193. Defendants are and were at all relevant times "merchant[s]" with respect to motor
28 vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and a "seller" of motor vehicles under
§ 7-2-103(1)(d).

1 194. With respect to leases, Defendants are and were at all relevant times “lessors” of
2 motor vehicles under Ala. Code. § 7-2A-103(1)(p).

3 195. The Class Vehicles are and were at all relevant times “goods” within the meaning of
4 Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

5 196. In connection with the purchase or lease of each one of its new vehicles, Defendants
6 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
7 warranty exists to cover “any repair to correct a manufacturers defect in materials or
8 workmanship.”

9 197. Defendants also made numerous representations, descriptions, and promises to
10 Alabama State Class members regarding the performance and emission controls of their vehicles.

11 198. For example, Defendants included in the warranty booklets for some or all of the
12 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
13 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
14 from defects in material and workmanship which would cause it not to meet those standards.”

15 199. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
16 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
17 Warranty.”

18 200. The EPA requires vehicle manufacturers to provide a Performance Warranty with
19 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
20 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
21 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
22 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
23 emission control components are covered for the first eight years or 80,000 miles (whichever
24 comes first). These major emission control components subject to the longer warranty include the
25 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
26 device or computer.

27 201. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
28 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express

1 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
2 Design and Defect Warranty required by the EPA covers repair of emission control or emission
3 related parts, which fail to function or function improperly because of a defect in materials or
4 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
5 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
6 comes first.

7 202. As manufacturers of light-duty vehicles, Defendants were required to provide these
8 warranties to purchasers or lessees of Class Vehicles.

9 203. Defendants' warranties formed a basis of the bargain that was reached when
10 consumers purchased or leased the Class Vehicles.

11 204. Despite the existence of warranties, Defendants failed to inform Alabama State
12 Class members that the Class Vehicles were defective and were intentionally designed and
13 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
14 disclosed to regulators and represented to consumers who purchased or leased them, and
15 Defendants failed to fix the defective emission components free of charge.

16 205. Defendants breached the express warranty promising to repair and correct
17 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
18 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

19 206. Affording Defendants a reasonable opportunity to cure their breach of written
20 warranties would be unnecessary and futile here.

21 207. Furthermore, the limited warranty promising to repair and correct Defendants'
22 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
23 insufficient to make Alabama State Class members whole and because Defendants have failed
24 and/or have refused to adequately provide the promised remedies within a reasonable time.

25 208. Accordingly, recovery by Plaintiffs and the Alabama State Class members is not
26 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
27 and workmanship, and they seek all remedies as allowed by law.

28

1 209. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
2 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
3 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
4 material facts regarding the Class Vehicles. Plaintiffs and the Alabama State Class members were
5 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

6 210. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
7 through the limited remedy of repairing and correcting Defendants' defect in materials and
8 workmanship, as many incidental and consequential damages have already been suffered because
9 of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
10 failure to provide such limited remedy within a reasonable time, and any limitation on Alabama
11 State Class members' remedies would be insufficient to make them whole.

12 211. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiffs and
13 Alabama State Class members assert, as additional and/or alternative remedies, the revocation of
14 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
15 currently owned or leased, and for such other incidental and consequential damages as allowed.

16 212. Defendants were provided reasonable notice of these issues by way of a letter sent
17 by Plaintiffs as well as the regulators' investigations.

18 213. As a direct and proximate result of Defendants' breach of express warranties,
19 Alabama State Class members have been damaged in an amount to be determined at trial.

20 **ALABAMA COUNT III:**
21 **Breach of Implied Warranty of Merchantability**
22 **Ala. Code §§ 7-2-314 and 7-2A-212**
23 **(On Behalf of the Alabama State Class)**

24 214. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 215. Plaintiffs Frank Belle and Alan Essreg (for the purposes of this count, "Plaintiffs")
27 bring this claim on behalf of themselves and the Alabama State Class against all Defendants.
28

1 216. Defendants are and were at all relevant times “merchant[s]” with respect to motor
2 vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and a “seller” of motor vehicles under
3 § 7-2-103(1)(d).

4 217. With respect to leases, Defendants are and were at all relevant times “lessors” of
5 motor vehicles under Ala. Code. § 7-2A-103(1)(p).

6 218. The Class Vehicles are and were at all relevant times “goods” within the meaning of
7 Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

8 219. A warranty that the Class Vehicles were in merchantable condition and fit for the
9 ordinary purpose for which vehicles are used is implied by law pursuant to Ala. Code §§ 7-2-314
10 and 7-2A-212.

11 220. These Class Vehicles, when sold or leased and at all times thereafter, were
12 materially different from vehicles Defendants submitted for emissions testing and/or did not
13 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
14 fit for the ordinary purpose for which vehicles are used.

15 221. Defendants were provided reasonable notice of these issues by way of a letter sent
16 by Plaintiffs as well as the regulators’ investigations.

17 222. As a direct and proximate result of Defendants’ breach of the implied warranty of
18 merchantability, Plaintiffs and Alabama State Class members have been damaged in an amount to
19 be proven at trial.

20 **ALASKA COUNT I:**
21 **Violations of the Alaska Unfair Trade Practices and Consumer Protection Act**
22 **Alaska Stat. Ann. § 45.50.471 *et seq.***
23 **(On Behalf of the Alaska State Class)**

24 223. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

25 224. Plaintiffs bring this claim on behalf of himself and the Alaska State Class against all
26 Defendants.

27 225. The Alaska Unfair Trade Practices And Consumer Protection Act (“Alaska CPA”)
28 declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of
trade or commerce unlawful, including: “(4) representing that goods or services have sponsorship,

1 approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a
2 person has a sponsorship, approval, status, affiliation, or connection that the person does not have;”
3 “(6) representing that goods or services are of a particular standard, quality, or grade, or that goods
4 are of a particular style or model, if they are of another;” “(8) advertising goods or services with
5 intent not to sell them as advertised;” or “(12) using or employing deception, fraud, false pretense,
6 false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact
7 with intent that others rely upon the concealment, suppression or omission in connection with the
8 sale or advertisement of goods or services whether or not a person has in fact been misled, deceived
9 or damaged.” Alaska Stat. § 45.50.471.

10 226. In the course of their business, Defendants concealed and suppressed material facts
11 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
12 emissions testing that were different from production vehicles and/or (b) falsely attesting that
13 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
14 did not.

15 227. Plaintiff and Alaska State Class members had no way of discerning that Defendants’
16 representations were false and misleading because Alaska State Class members did not have access
17 to Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware.
18 Alaska State Class members did not and could not unravel Defendants’ deception on their own.

19 228. Defendants thus violated the Alaska CPA by, at minimum: representing that Class
20 Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that
21 Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
22 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
23 transaction involving Class Vehicles has been supplied in accordance with a previous
24 representation when it has not.

25 229. Defendants intentionally and knowingly misrepresented material facts regarding the
26 Class Vehicles with intent to mislead the Alaska State Class.

27 230. Defendants knew or should have known that their conduct violated the Alaska CPA.
28

1 231. Defendants owed the Alaska State Class a duty to disclose the illegality and public
2 health risks, the true nature of the Class Vehicles, because Defendants:

3 A. possessed exclusive knowledge that they were manufacturing, selling, and
4 distributing vehicles throughout the United States that did not perform as advertised;

5 B. intentionally concealed the foregoing from regulators and Alaska Class
6 members; and/or

7 C. made incomplete representations about the Class Vehicles' fuel economy
8 and emissions while purposefully withholding material facts that contradicted these
9 representations.

10 232. Defendants' concealment of the Class Vehicles' true fuel consumption and
11 emissions was material to the Alaska State Class.

12 233. Defendants' unfair or deceptive acts or practices were likely to and did in fact
13 deceive regulators and reasonable consumers, including the Alabama State Class, about the true
14 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of Defendants'
15 brands, and the true value of the Class Vehicles.

16 234. Defendants' violations present a continuing risk to the Alaska State Class as well as
17 to the general public. Defendants' unlawful acts and practices complained of herein affect the
18 public interest.

19 235. As a direct and proximate result of Defendants' violations of the Alaska CPA, the
20 Alaska State Class have suffered injury-in-fact and/or actual damage.

21 236. Pursuant to Alaska Stat. § 45.50.531, the Alaska State Class seeks monetary relief
22 against Defendants measured as the greater of (a) three times the actual damages in an amount to be
23 determined at trial or (b) \$500 for each Alaska State Class member.

24 237. Plaintiff and the Alaska State Class also seek an order enjoining Defendants' unfair,
25 unlawful, and/or deceptive practices pursuant to Alaska Stat. § 45.50.535, attorneys' fees, and any
26 other just and proper relief available under the Alaska CPA.

27 238. Pursuant to Alaska Stat. § 45.50.535, Plaintiff sent notice letters to Defendants.
28 Additionally, all Defendants were provided notice of the issues raised in this count and this

1 Complaint by way of investigations conducted by governmental regulators. The Alabama State
2 Class seeks all damages and relief to which it is entitled.

3 **ALASKA COUNT II:**
4 **Breach of Express Warranty**
5 **Alaska Stat. §§ 45.02.313 and 45.12.210**
6 **(On Behalf of the Alaska State Class)**

7 239. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 240. Plaintiffs bring this claim on behalf of himself and the Alaska State Class against all
10 Defendants.

11 241. Defendants are and were at all relevant times “merchant[s]” with respect to motor
12 vehicles under Alaska Stat. §§ 45.02.104(a) and 45.12.103(c)(11), and a “seller” of motor vehicles
13 under Alaska Stat. § 45.02.103(a)(4).

14 242. With respect to leases, Defendants are and were at all relevant times “lessors” of
15 motor vehicles under Alaska Stat. § 45.12.103(a)(16).

16 243. The Class Vehicles are and were at all relevant times “goods” within the meaning of
17 Alaska Stat. §§ 45.02.105(a) and 45.12.103(a)(8).

18 244. In connection with the purchase or lease of each one of its new vehicles, Defendants
19 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
20 warranty exists to cover “any repair to correct a manufacturers defect in materials or
21 workmanship.”

22 245. Defendants also made numerous representations, descriptions, and promises to
23 Alaska State Class members regarding the performance and emission controls of their vehicles.

24 246. For example, Defendants included in the warranty booklets for some or all of the
25 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
26 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
27 from defects in material and workmanship which would cause it not to meet those standards.”
28

1 247. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 248. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 249. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 250. As manufacturers of light-duty vehicles, Defendants were required to provide these
22 warranties to purchasers or lessees of Class Vehicles.

23 251. Defendants’ warranties formed a basis of the bargain that was reached when
24 consumers purchased or leased Class Vehicles.

25 252. Despite the existence of warranties, Defendants failed to inform Alaska State Class
26 members that the Class Vehicles were defective and were intentionally designed and manufactured
27 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
28

1 regulators and represented to consumers who purchased or leased them, and Defendants failed to
2 fix the defective emission components free of charge.

3 253. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 254. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 255. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
10 insufficient to make Plaintiffs and Alaska State Class members whole and because Defendants
11 have failed and/or have refused to adequately provide the promised remedies within a reasonable
12 time.

13 256. Accordingly, recovery by Plaintiffs and the Alaska State Class members is not
14 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
15 and workmanship, and they seek all remedies as allowed by law.

16 257. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
17 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
18 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
19 material facts regarding the Class Vehicles. Plaintiff and the Alaska State Class members were
20 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

21 258. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
22 through the limited remedy of repairing and correcting Defendants' defect in materials and
23 workmanship fails in its essential purpose as many incidental and consequential damages have
24 already been suffered because of Defendants' fraudulent conduct as alleged herein, and because of
25 its failure and/or continued failure to provide such limited remedy within a reasonable time, and
26 any limitation on Plaintiff and Alaska State Class members' remedies would be insufficient to
27 make them whole.
28

1 259. Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiff and
2 Alaska State Class members assert, as additional and/or alternative remedies, the revocation of
3 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
4 currently owned or leased, and for such other incidental and consequential damages as allowed.

5 260. Defendants were provided reasonable notice of these issues by way of a letter sent
6 by Plaintiffs as well as the regulators’ investigations.

7 261. As a direct and proximate result of Defendants’ breach of express warranties,
8 Alaska State Class members have been damaged in an amount to be determined at trial.

9 **ALASKA COUNT III:**
10 **Breach of Implied Warranty of Merchantability**
11 **Alaska Stat. §§ 45.02.314 and 45.12.212**
12 **(On Behalf of the Alaska State Class)**

13 262. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 263. Plaintiffs bring this claim on behalf of himself and the Alaska State Class against all
16 Defendants.

17 264. Defendants are and were at all relevant times “merchant[s]” with respect to motor
18 vehicles under Alaska Stat. §§ 45.02.104(a) and 45.12.103(c)(11), and a “seller” of motor vehicles
19 under Alaska Stat. § 45.02.103(a)(4).

20 265. With respect to leases, Defendants are and were at all relevant times “lessors” of
21 motor vehicles under Alaska Stat. § 45.12.103(a)(16).

22 266. The Class Vehicles are and were at all relevant times “goods” within the meaning of
23 Alaska Stat. §§ 45.02.105(a) and 45.12.103(a)(8).

24 267. A warranty that the Class Vehicles were in merchantable condition and fit for the
25 ordinary purpose for which vehicles are used is implied by law pursuant to Alaska Stat.
26 §§ 45.02.314 and 45.12.212.

27 268. These Class Vehicles, when sold or leased and at all times thereafter, were
28 materially different from vehicles Defendants submitted for emissions testing and/or did not

1 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
2 fit for the ordinary purpose for which vehicles are used.

3 269. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 270. As a direct and proximate result of Defendants' breach of the implied warranty of
6 merchantability, Alaska State Class members have been damaged in an amount to be proven at
7 trial.

8 **ARIZONA COUNT I:**
9 **Violations of the Arizona Consumer Fraud Act**
10 **Ariz. Rev. Stat. § 44-1521, *et seq.***
11 **(On Behalf of the Arizona State Class)**

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

14 272. Plaintiff Isaías Iñiguez (for the purposes of this count, "Plaintiff") brings this claim
15 on behalf of himself and the Arizona State Class against all Defendants.

16 273. Defendants, Plaintiff, and Arizona State Class members are "persons" within the
17 meaning of the Arizona Consumer Fraud Act ("Arizona CFA"), Ariz. Rev. Stat. § 44-1521(6).

18 274. The Class Vehicles are "merchandise" within the meaning of Ariz. Rev. Stat.
19 § 44-1521(5).

20 275. The Arizona CFA provides that "[t]he act, use or employment by any person of any
21 deception, deceptive act or practice, fraud, . . . misrepresentation, or concealment, suppression or
22 omission of any material fact with intent that others rely upon such concealment, suppression or
23 omission, in connection with the sale . . . of any merchandise whether or not any person has in fact
24 been misled, deceived or damaged thereby, is declared to be an unlawful practice." Ariz. Rev. Stat.
25 § 44-1522(A).

26 276. In the course of their business, Defendants concealed and suppressed material facts
27 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
28 emissions testing that were different from production vehicles and/or (b) falsely attesting that

1 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
2 did not.

3 277. Plaintiff and Arizona State Class members had no way of discerning that
4 Defendants' representations were false and misleading because Plaintiff and Arizona State Class
5 members did not have access to Defendants' emissions certification test vehicles and Defendants'
6 emissions-related hardware.

7 278. Defendants thus violated the Arizona CFA by, at minimum: employing deception,
8 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of
9 any material fact with intent that others rely upon such concealment, suppression or omission, in
10 connection with the sale of Class Vehicles.

11 279. Defendants intentionally and knowingly misrepresented material facts regarding the
12 Class Vehicles with intent to mislead Plaintiff and the Arizona State Class.

13 280. Defendants knew or should have known that their conduct violated the Arizona
14 CFA.

15 281. Defendants owed Plaintiff and the Arizona State Class a duty to disclose the
16 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

- 17 A. possessed exclusive knowledge that they were manufacturing, selling, and
18 distributing vehicles throughout the United States that did not perform as advertised;
- 19 B. intentionally concealed the foregoing from regulators, Plaintiff, and Arizona
20 State Class members; and/or
- 21 C. made incomplete representations about the Class Vehicles' fuel economy
22 and emissions while purposefully withholding material facts from Plaintiff and Arizona
23 State Class members that contradicted these representations.

24 282. Defendants' concealment of the Class Vehicles' true fuel consumption and
25 emissions was material to Plaintiff and the Arizona State Class.

26 283. Defendants' unfair or deceptive acts or practices were likely to and did in fact
27 deceive regulators and reasonable consumers, including Plaintiff and the Arizona State Class, about
28

1 the true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of
2 Defendants' brands, and the true value of the Class Vehicles.

3 284. Plaintiff and the Arizona State Class suffered ascertainable loss and actual damages
4 as a direct and proximate result of Defendants' misrepresentations and concealment of and failure
5 to disclose material information.

6 285. Plaintiff and the Arizona State Class seek monetary relief against Defendants in an
7 amount to be determined at trial. Plaintiff and the Arizona State Class also seek punitive damages
8 because Defendants engaged in aggravated and outrageous conduct.

9 286. Plaintiff and the Arizona State Class also seek an order enjoining Defendants'
10 unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief
11 available under the Arizona CFA.

12 **ARIZONA COUNT II:**
13 **Breach of Express Warranty**
14 **Ariz. Rev. Stat. §§ 47-2313 and 47-2A210**
15 **(On Behalf of the Arizona State Class)**

16 287. Plaintiff re-allege and incorporate by reference all preceding allegations as though
17 fully set forth herein.

18 288. Plaintiff Isaías Iñiguez (for the purposes of this count, "Plaintiff") brings this claim
19 on behalf of himself and the Arizona State Class against all Defendants.

20 289. Defendants are and were at all relevant times "merchant[s]" with respect to motor
21 vehicles under Ariz. Rev. Stat. §§ 47-2104(A) and 47-2a103(c); and is a "seller" of motor vehicles
22 under Ariz. Rev. Stat. § 47-2103(A)(4).

23 290. With respect to leases, Defendants are and were at all relevant times "lessors" of
24 motor vehicles under Ariz. Rev. Stat. § 47-2a103(A)(16).

25 291. The Class Vehicles are and were at all relevant times "goods" within the meaning of
26 Ariz. Rev. Stat. §§ 47-2105(A) and 47-2a103(A)(8).

27 292. In connection with the purchase or lease of each one of its new vehicles, Defendants
28 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
warranty exists to repair the vehicle "if it fails to function properly as designed during normal use."

1 293. Defendants also made numerous representations, descriptions, and promises to
2 Plaintiff and Arizona State Class members regarding the performance and emission controls of
3 their vehicles.

4 294. For example, Defendants included in the warranty booklets for some or all of the
5 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
6 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
7 from defects in material and workmanship which would cause it not to meet those standards.”

8 295. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
9 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
10 Warranty.”

11 296. The EPA requires vehicle manufacturers to provide a Performance Warranty with
12 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
13 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
14 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
15 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
16 emission control components are covered for the first eight years or 80,000 miles (whichever
17 comes first). These major emission control components subject to the longer warranty include the
18 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
19 device or computer.

20 297. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
21 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
22 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
23 Design and Defect Warranty required by the EPA covers repair of emission control or emission
24 related parts, which fail to function or function improperly because of a defect in materials or
25 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
26 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
27 comes first.

1 298. As manufacturers of light-duty vehicles, Defendants were required to provide these
2 warranties to purchasers or lessees of Class Vehicles.

3 299. Defendants' warranties formed a basis of the bargain that was reached when
4 consumers purchased or leased Class Vehicles.

5 300. Despite the existence of warranties, Defendants failed to inform Plaintiff and
6 Arizona State Class members that the Class Vehicles were defective and were intentionally
7 designed and manufactured to emit more pollution and achieve worse fuel economy on the road
8 than what was disclosed to regulators and represented to consumers who purchased or leased them,
9 and Defendants failed to fix the defective emission components free of charge.

10 301. Defendants breached the express warranty promising to repair and correct
11 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
12 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

13 302. Affording Defendants a reasonable opportunity to cure their breach of written
14 warranties would be unnecessary and futile here.

15 303. Furthermore, the limited warranty promising to repair and correct Defendants'
16 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
17 insufficient to make Plaintiff and Arizona State Class members whole and because Defendants
18 have failed and/or have refused to adequately provide the promised remedies within a reasonable
19 time.

20 304. Accordingly, recovery by Plaintiff and Arizona State Class members is not
21 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
22 and workmanship, and they seek all remedies as allowed by law.

23 305. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
24 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
25 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
26 material facts regarding the Class Vehicles. Plaintiff and Arizona State Class members were
27 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.
28

1 306. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
2 through the limited remedy of repairing and correcting Defendants’ defect in materials and
3 workmanship as many incidental and consequential damages have already been suffered because of
4 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
5 failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs’
6 Arizona State Class members’ remedies would be insufficient to make them whole.

7 307. Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiff and
8 Arizona State Class members assert, as additional and/or alternative remedies, the revocation of
9 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
10 currently owned or leased, and for such other incidental and consequential damages as allowed.

11 308. Defendants were provided reasonable notice of these issues by way of a letter sent
12 by Plaintiffs as well as the regulators’ investigations.

13 309. As a direct and proximate result of Defendants’ breach of express warranties,
14 Plaintiff and Arizona State Class members have been damaged in an amount to be determined at
15 trial.

16 **ARIZONA COUNT III:**
17 **Breach of Implied Warranty of Merchantability**
18 **Ariz. Rev. Stat. §§ 47-2314 and 47-2A212**
19 **(On Behalf of the Arizona State Class)**

20 310. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
21 forth herein.

22 311. Plaintiff Isaías Iñiguez (for the purposes of this count, “Plaintiff”) brings this claim
23 on behalf of himself and the Arizona State Class against all Defendants.

24 312. Defendants are and were at all relevant times “merchant[s]” with respect to motor
25 vehicles under Ariz. Rev. Stat. §§ 47-2104(A) and 47-2a103(c); and is a “seller” of motor vehicles
26 under Ariz. Rev. Stat. § 47-2103(A)(4).

27 313. With respect to leases, Defendants are and were at all relevant times “lessors” of
28 motor vehicles under Ariz. Rev. Stat. § 47-2a103(A)(16).

1 314. The Class Vehicles are and were at all relevant times “goods” within the meaning of
2 Ariz. Rev. Stat. §§ 47-2105(A) and 47-2a103(A)(8).

3 315. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to Ariz. Rev. Stat.
5 §§ 47-2314 and 47-2a212.

6 316. These Class Vehicles, when sold or leased and at all times thereafter, were
7 materially different from vehicles Defendants submitted for emissions testing and/or did not
8 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
9 fit for the ordinary purpose for which vehicles are used.

10 317. Defendants were provided reasonable notice of these issues by way of a letter sent
11 by Plaintiffs as well as the regulators’ investigations.

12 318. As a direct and proximate result of Defendants’ breach of the implied warranty of
13 merchantability, Arizona State Class members have been damaged in an amount to be proven at
14 trial.

15 **ARKANSAS COUNT I:**
16 **Violations of the Deceptive Trade Practices Act**
17 **Ark. Code Ann. § 4-88-101 *et seq.***
18 **(On Behalf of the Arkansas State Class)**

19 319. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

20 320. This count is brought on behalf of the Arkansas State Class against all Defendants.

21 321. Defendants and Arkansas State Class members are “persons” within the meaning of
22 Arkansas Deceptive Trade Practices Act (“Arkansas DTPA”), Ark. Code Ann. § 4-88-102(5).

23 322. The Class Vehicles are “goods” within the meaning of Ark. Code Ann.
24 § 4-88-102(4).

25 323. The Arkansas DTPA prohibits “[d]eceptive and unconscionable trade practices,”
26 which include, but are not limited to, a list of enumerated items, including “[e]ngaging in any other
27 unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]” Ark. Code
28 Ann. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in
connection with the sale or advertisement of any goods: “(1) The act, use, or employment by any

1 person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission
2 of any material fact with intent that others rely upon the concealment, suppression, or omission.”
3 Ark. Code Ann. § 4-88-108.

4 324. In the course of their business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
6 emissions testing that were different from production vehicles and/or (b) falsely attesting that
7 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
8 did not.

9 325. Arkansas State Class members had no way of discerning that Defendants’
10 representations were false and misleading because the Arkansas State Class did not have access to
11 Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware.

12 326. Defendants thus violated the Arkansas DTPA by, at minimum: representing that
13 Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;
14 representing that Class Vehicles are of a particular standard, quality, and grade when they are not;
15 advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing
16 that the subject of a transaction involving Class Vehicles has been supplied in accordance with a
17 previous representation when it has not.

18 327. Defendants intentionally and knowingly misrepresented material facts regarding the
19 Class Vehicles with intent to mislead the Arkansas State Class. Defendants knew or should have
20 known that their conduct violated the Arkansas DTPA.

21 328. Defendants owed the Arkansas State Class a duty to disclose the illegality and
22 public health risks, the true nature of the Class Vehicles, because Defendants:

23 A. possessed exclusive knowledge that they were manufacturing, selling, and
24 distributing vehicles throughout the United States that did not perform as advertised;

25 B. intentionally concealed the foregoing from regulators, and Arkansas State
26 Class members; and/or

1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 329. Defendants' concealment of the Class Vehicles' true fuel consumption and
5 emissions was material to the Arkansas State Class.

6 330. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the Arkansas State Class about the true
8 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of Defendants'
9 brands, and the true value of the Class Vehicles.

10 331. Defendants' violations present a continuing risk to the Arkansas State Class as well
11 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
12 public interest.

13 332. The Arkansas State Class suffered ascertainable loss and actual damages as a direct
14 and proximate result of Defendants' misrepresentations and concealment of and failure to disclose
15 material information. Defendants had an ongoing duty to all their customers to refrain from unfair
16 and deceptive practices under the Arkansas DTPA. All owners of Class Vehicles suffered
17 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
18 course of Defendants' business.

19 333. As a direct and proximate result of Defendants' violations of the Arkansas DTPA,
20 members of the Arkansas State Class have suffered injury-in-fact and/or actual damage.

21 334. The Arkansas State Class seeks monetary relief against Defendants in an amount to
22 be determined at trial. The Arkansas State Class also seeks punitive damages because Defendants
23 acted wantonly in causing the injury or with conscious indifference to the consequences.

24 335. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
25 deceptive practices, attorneys' fees, and any other just and proper relief available under the
26 Arkansas DTPA.

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**ARKANSAS COUNT II:
Breach of Express Warranty
Ark Code Ann. §§ 4-2-313 and 4-2A-210
(On Behalf of the Arkansas State Class)**

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4 336. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
5 fully set forth herein.

6 337. This count is brought on behalf of the Arkansas State Class against all Defendants.

7 338. Defendants are and were at all relevant times “merchant[s]” with respect to motor
8 vehicles under Ark. Code §§ 4-2-104(1) and 4-2A-103(3), and “seller[s]” of motor vehicles under
9 § 4-2-103(1)(d).

10 339. With respect to leases, Defendants are and were at all relevant times “lessors” of
11 motor vehicles under Ark. Code § 4-2A-103(1)(p).

12 340. The Class Vehicles are and were at all relevant times “goods” within the meaning of
13 Ark. Code §§ 4-2-105(1) and 4-2A-103(1)(h).

14 341. In connection with the purchase or lease of each one of its new vehicles, Defendants
15 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
16 warranty exists to cover “any repair to correct a manufacturers defect in materials or
17 workmanship.”

18 342. Defendants also made numerous representations, descriptions, and promises to
19 Arkansas State Class members regarding the performance and emission controls of their vehicles.

20 343. For example, Defendants included in the warranty booklets for some or all of the
21 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
22 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
23 from defects in material and workmanship which would cause it not to meet those standards.”

24 344. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
25 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
26 Warranty.”

27 345. The EPA requires vehicle manufacturers to provide a Performance Warranty with
28 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for

1 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
2 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
3 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
4 emission control components are covered for the first eight years or 80,000 miles (whichever
5 comes first). These major emission control components subject to the longer warranty include the
6 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
7 device or computer.

8 346. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
9 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
10 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
11 Design and Defect Warranty required by the EPA covers repair of emission control or emission
12 related parts, which fail to function or function improperly because of a defect in materials or
13 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
14 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
15 comes first.

16 347. As manufacturers of light-duty vehicles, Defendants were required to provide these
17 warranties to purchasers or lessees of Class Vehicles.

18 348. Defendants' warranties formed a basis of the bargain that was reached when
19 consumers purchased or leased Class Vehicles.

20 349. Despite the existence of warranties, Defendants failed to inform Arkansas State
21 Class members that the Class Vehicles defective and were intentionally designed and manufactured
22 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
23 regulators and represented to consumers who purchased or leased them, and Defendants failed to
24 fix the defective emission components free of charge.

25 350. Defendants breached the express warranty promising to repair and correct
26 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
27 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.
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1 351. Affording Defendants a reasonable opportunity to cure their breach of written
2 warranties would be unnecessary and futile here.

3 352. Furthermore, the limited warranty promising to repair and correct Defendants’
4 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
5 insufficient to make Arkansas State Class members whole and because Defendants have failed
6 and/or have refused to adequately provide the promised remedies within a reasonable time.

7 353. Accordingly, recovery by Arkansas State Class members is not restricted to the
8 limited warranty promising to repair and correct Defendants’ defect in materials and workmanship,
9 and they seek all remedies as allowed by law.

10 354. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
11 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
12 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
13 material facts regarding the Class Vehicles. Arkansas State Class members were therefore induced
14 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

15 355. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
16 through the limited remedy of repairing and correcting Defendants’ defect in materials and
17 workmanship as many incidental and consequential damages have already been suffered because of
18 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
19 failure to provide such limited remedy within a reasonable time, and any limitation on Arkansas
20 State Class members’ remedies would be insufficient to make them whole.

21 356. Finally, because of Defendants’ breach of warranty as set forth herein, Arkansas
22 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
23 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
24 owned or leased, and for such other incidental and consequential damages as allowed.

25 357. Defendants were provided reasonable notice of these issues by way of a letter sent
26 by Plaintiffs as well as the regulators’ investigations.

27 358. As a direct and proximate result of Defendants’ breach of express warranties,
28 Arkansas State Class members have been damaged in an amount to be determined at trial.

**ARKANSAS COUNT III:
Breach of Implied Warranty of Merchantability
Ark. Code Ann. §§ 4-2-314 and 4-2A-212
(On Behalf of the Arkansas State Class)**

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4 359. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
5 forth herein.

6 360. This count is brought on behalf of the Arkansas State Class against all Defendants.

7 361. Defendants are and were at all relevant times “merchant[s]” with respect to motor
8 vehicles under Ark. Code §§ 4-2-104(1) and 4-2A-103(3), and “seller[s]” of motor vehicles under
9 § 4-2-103(1)(d).

10 362. With respect to leases, Defendants are and were at all relevant times “lessors” of
11 motor vehicles under Ark. Code § 4-2A-103(1)(p).

12 363. The Class Vehicles are and were at all relevant times “goods” within the meaning of
13 Ark. Code §§ 4-2-105(1) and 4-2A-103(1)(h).

14 364. A warranty that the Class Vehicles were in merchantable condition and fit for the
15 ordinary purpose for which vehicles are used is implied by law pursuant to Ark. Code §§ 4-2-314
16 and 4-2A-212.

17 365. These Class Vehicles, when sold or leased and at all times thereafter, were
18 materially different from vehicles Defendants submitted for emissions testing and/or did not
19 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
20 fit for the ordinary purpose for which vehicles are used.

21 366. Defendants were provided reasonable notice of these issues by way of a letter sent
22 by Plaintiffs as well as the regulators’ investigations.

23 367. As a direct and proximate result of Defendants’ breach of the implied warranty of
24 merchantability, Arkansas State Class members have been damaged in an amount to be proven at
25 trial.

**CALIFORNIA COUNT I:
Violation of California Consumers Legal Remedies Act
Cal Bus. & Prof. Code § 1750, et seq.
(On Behalf of the California State Class)**

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

369. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isaías Iñiguez, Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the California State Class against all Defendants.

370. Plaintiffs and members of the California State Class were deceived by Defendants’ failure to disclose that the Class Vehicles were materially different from vehicles Defendants submitted for emissions testing and/or did not comply with emissions regulations when being driven in Sport Plus mode, and were therefore not fit for the ordinary purpose for which vehicles are used.

371. Defendants engaged in unfair or deceptive acts or practices when, in the course of their business they, among other acts and practices, knowingly made materially incomplete representations as to the characteristics, uses and benefits of the Class Vehicles.

372. In the various channels of information through which Defendants sold and marketed Class Vehicles, Defendants failed to disclose material information concerning the Class Vehicles, which it had a duty to disclose. Defendants had a duty to disclose the defect because, as detailed above, (a) Defendants knew about the emissions cheating scheme in the Class Vehicles; (b) Defendants had exclusive knowledge of material facts not known to the general public or the other California State Class members; and (c) Defendants made partial representations about the Class Vehicles that were misleading because they did not disclose the full truth. As detailed above, Defendants knew the information concerning the defect at the time of advertising and selling the Class Vehicles, all of which was intended to induce consumers to purchase the Class Vehicles.

1 373. Defendants intended for Plaintiffs and California State Class members to rely on it
2 to provide adequately designed, and adequately manufactured automobiles and to honestly and
3 accurately reveal the problems described throughout this Complaint.

4 374. Defendants intentionally failed or refused to disclose the defect to consumers.

5 375. Defendants' conduct and deceptive omissions were intended to induce Plaintiffs and
6 California State Class members to believe that the Class Vehicles were adequately designed and
7 adequately manufactured automobiles.

8 376. Defendants' conduct constitutes unfair acts or practices as defined by the California
9 Consumers Legal Remedies Act (the "CLRA").

10 377. Plaintiffs and the other California State Class members have suffered injury in fact
11 and actual damages resulting from Defendants' material omissions.

12 378. Plaintiffs and the California State Class seek an order enjoining Defendants' unfair
13 or deceptive acts or practices, equitable relief, and any other just and proper relief available under
14 the CLRA. The claim for equitable relief is brought in the alternative should Plaintiffs not have an
15 adequate remedy at law.

16 379. Defendants are on notice of the issues raised in this count and this Complaint by way
17 of investigations conducted by governmental regulators. Plaintiffs also sent notice letters to
18 Defendants in accordance with Cal. Civ. Code § 1782(a) of the CLRA, notifying Defendants of
19 their alleged violations of Cal. Civ. Code § 1770(a) and demanding that Defendants correct or
20 agree to correct the actions described therein within thirty (30) days of the notice letter. Because
21 Defendants failed to remedy their unlawful conduct within the requisite time period, Plaintiffs seek
22 all damages and relief to which Plaintiffs and the California State Class are entitled under the
23 CLRA.

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25 **CALIFORNIA COUNT II:**
26 **Violations of the California Unfair Competition Law**
27 **Cal. Bus. & Prof. Code § 17200 *et seq.***
28 **(On Behalf of the California State Class)**

380. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1 381. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isaías Iñiguez,
2 Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas
3 (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the
4 California State Class against all Defendants.

5 382. California Business and Professions Code § 17200 prohibits any “unlawful, unfair,
6 or fraudulent business act or practices.” Defendants have engaged in unlawful, fraudulent, and
7 unfair business acts and practices in violation of the UCL.

8 383. Defendants’ conduct, as described herein, was and is fraudulent and in violation of
9 the UCL. Defendants’ conduct violates the UCL in at least the following ways:

10 a. by knowingly and intentionally concealing from Plaintiffs and California
11 State Class members that the Class Vehicles suffer from a design defect while obtaining money
12 from the California State Class members;

13 b. by marketing Class Vehicles as possessing functional and defect-free,
14 EPA-compliant engine systems; and

15 c. by purposefully designing and manufacturing the Class Vehicles to emit
16 more pollution and achieve worse fuel economy on the road than what was disclosed to regulators
17 and represented to consumers who purchased or leased them, and failing to fix the defective
18 emission component free of charge.

19 384. Defendants’ misrepresentations and omissions alleged herein caused Plaintiffs and
20 the California State Class members to make their purchases or leases of their Class Vehicles.
21 Absent those misrepresentations and omissions, Plaintiffs and California State Class members
22 would not have purchased or leased these vehicles, would not have purchased or leased these Class
23 Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative
24 vehicles that did not cheat on emissions testing or have inflated and misleading fuel economy
25 values.

26 385. Accordingly, Plaintiffs and California State Class members have suffered
27 ascertainable loss and actual damages as a direct and proximate result of Defendants’
28 misrepresentations and their concealment of and failure to disclose material information.

1 386. Plaintiffs requests that this Court enter such orders or judgments as may be
2 necessary to enjoin Defendants from continuing its unfair, unlawful, and/or deceptive practices and
3 to restore to members of the California State Class any money it acquired by unfair competition,
4 including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code
5 § 17203 and Cal. Bus. & Prof. Code § 3345; and for such other relief set forth below. The claim for
6 equitable relief is brought in the alternative should Plaintiffs not have an adequate remedy at law.

7 **CALIFORNIA COUNT III:
8 Violations of the California False Advertising Law
9 Cal. Civ. Code § 17500 et seq.
10 (On Behalf of the California State Class)**

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

13 388. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isaías Iñiguez,
14 Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas
15 (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the
16 California State Class against all Defendants.

17 389. California Bus. & Prof. Code § 17500 states: "It is unlawful for any . . . corporation
18 . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the public
19 to enter into any obligation relating thereto, to make or disseminate or cause to be made or
20 disseminated . . . from this state before the public in any state, in any newspaper or other
21 publication, or any advertising device, . . . or in any other manner or means whatever, including
22 over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by
23 the exercise of reasonable care should be known, to be untrue or misleading."

24 390. Defendants caused to be made or disseminated through California and the United
25 States, through advertising, marketing and other publications, statements that were untrue
26 or misleading, and which were known, or which by the exercise of reasonable care should have
27 been known to Defendants, to be untrue and misleading to consumers, including California State
28 Class members.

1 391. Defendants have violated § 17500 because the misrepresentations and
2 omissions regarding the reliability and functionality of Class Vehicles as set forth in this
3 Complaint were material and likely to deceive a reasonable consumer.

4 392. Plaintiffs and the other California State Class members have suffered an injury in
5 fact, including the loss of money or property, as a result of Defendants' unfair, unlawful, and/or
6 deceptive practices. In purchasing or leasing their Class Vehicles, the California State Class relied
7 on the misrepresentations and/or omissions of Defendants with respect to the performance and
8 reliability of the Class Vehicles. Defendants' representations turned out not to be true because the
9 Class Vehicles are distributed with faulty and defective hardware.

10 393. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
11 conduct of Defendants business. Defendants' wrongful conduct is part of a pattern or generalized
12 course of conduct that is still perpetuated and repeated, both in the State of California and
13 nationwide.

14 394. The California State Class requests that this Court enter such orders or judgments as
15 may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive
16 practices and to restore to the California State Class any money Defendants acquired by unfair
17 competition, including restitution and/or restitutionary disgorgement, and for such other relief set
18 forth below. The claim for equitable relief is brought in the alternative should Plaintiffs not have an
19 adequate remedy at law.

20 **CALIFORNIA COUNT IV:**
21 **Breach of Express Warranty**
22 **Cal. Com. Code §§ 2313 and 10210**
(On Behalf of the California State Class)

23 395. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
24 fully set forth herein.

25 396. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isafas Iñiguez,
26 Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas
27 (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the
28 California State Class against all Defendants.

1 397. Defendants are and were at all relevant times “merchant[s]” with respect to motor
2 vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” of motor vehicles under
3 § 2103(1)(d).

4 398. With respect to leases, Defendants are and were at all relevant times “lessors” of
5 motor vehicles under Cal. Com. Code § 10103(a)(16).

6 399. The Class Vehicles are and were at all relevant times “goods” within the meaning of
7 Cal. Com. Code §§ 2105(1) and 10103(a)(8).

8 400. In connection with the purchase or lease of each one of its new vehicles, Defendants
9 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
10 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

11 401. Defendants also made numerous representations, descriptions, and promises to
12 California State Class members regarding the performance and emission controls of their vehicles.

13 402. For example, Defendants included in the warranty booklets for some or all of the
14 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
15 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
16 from defects in material and workmanship which would cause it not to meet those standards.”

17 403. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
18 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
19 Warranty.”

20 404. The EPA requires vehicle manufacturers to provide a Performance Warranty with
21 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
22 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
23 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
24 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
25 emission control components are covered for the first eight years or 80,000 miles (whichever
26 comes first). These major emission control components subject to the longer warranty include the
27 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
28 device or computer.

1 405. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 406. As manufacturers of light-duty vehicles, Defendants were required to provide these
10 warranties to purchasers or lessees of Class Vehicles.

11 407. Defendants' warranties formed a basis of the bargain that was reached when
12 consumers purchased or leased Class Vehicles.

13 408. Despite the existence of warranties, Defendants failed to inform Plaintiffs and
14 California State Class members that the Class Vehicles were defective and were intentionally
15 designed and manufactured to emit more pollution and achieve worse fuel economy on the road
16 than what was disclosed to regulators and represented to consumers who purchased or leased them,
17 and Defendants failed to fix the defective emission components free of charge.

18 409. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 410. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 411. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
25 insufficient to make California State Class members whole and because Defendants have failed
26 and/or have refused to adequately provide the promised remedies within a reasonable time.

1 412. Accordingly, recovery by Plaintiffs and California State Class members is not
2 restricted to the limited warranty promising to repair and correct Defendants’ defect in materials
3 and workmanship, and they seek all remedies as allowed by law.

4 413. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
5 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
6 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. California State Class members were therefore induced
8 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 414. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
10 through the limited remedy of repairing and correcting Defendants’ defect in materials and
11 workmanship as many incidental and consequential damages have already been suffered because of
12 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
13 failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs
14 and California State Class members’ remedies would be insufficient to make them whole.

15 415. Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiffs and
16 California State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 416. Defendants were provided reasonable notice of these issues by way of a letter sent
20 by Plaintiffs as well as the regulators’ investigations.

21 417. As a direct and proximate result of Defendants’ breach of express warranties,
22 California State Class members have been damaged in an amount to be determined at trial.

23 **CALIFORNIA COUNT V:**
24 **Breach of Implied Warranty of Merchantability**
25 **Cal. Com. Code §§ 2314 and 10212**
26 **(On Behalf of the California State Class)**

27 418. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 419. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isaías Iñiguez,
2 Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas
3 (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the
4 California State Class against all Defendants.

5 420. Defendants are and were at all relevant times “merchant[s]” with respect to motor
6 vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” of motor vehicles under
7 § 2103(1)(d).

8 421. With respect to leases, Defendants are and were at all relevant times “lessors” of
9 motor vehicles under Cal. Com. Code § 10103(a)(16).

10 422. The Class Vehicles are and were at all relevant times “goods” within the meaning of
11 Cal. Com. Code §§ 2105(1) and 10103(a)(8).

12 423. A warranty that the Class Vehicles were in merchantable condition and fit for the
13 ordinary purpose for which vehicles are used is implied by law pursuant to Cal. Com. Code §§ 2314
14 and 10212.

15 424. These Class Vehicles, when sold or leased and at all times thereafter, were
16 materially different from vehicles Defendants submitted for emissions testing and/or did not
17 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
18 fit for the ordinary purpose for which vehicles are used.

19 425. Defendants were provided reasonable notice of these issues by way of a letter sent
20 by Plaintiffs as well as the regulators’ investigations.

21 426. As a direct and proximate result of Defendants’ breach of the implied warranty of
22 merchantability, Plaintiffs and California State Class members have been damaged in an amount to
23 be proven at trial.

24 **CALIFORNIA COUNT VI:**
25 **Violation of Song-Beverly Consumer Warranty Act, Breach of Implied Warranty**
26 **Cal Civ. Code § 1790, *et seq.***
(On Behalf of the California State Class)

27 427. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
28 set forth herein.

1 428. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isaías Iñiguez,
2 Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas
3 (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the
4 California State Class against all Defendants.

5 429. Plaintiffs and members of the California State Class who purchased Class Vehicles
6 in California are “buyers” within the meaning of Cal. Civ. Code § 1791.

7 430. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
8 § 1791(a).

9 431. Defendants are the “manufacturer[s]” of the Class Vehicles within the meaning of
10 Cal. Civ. Code § 1791(j).

11 432. Defendants impliedly warranted to Plaintiffs and the other members of the
12 California State Class that the Class Vehicles were “merchantable” within the meaning of Cal. Civ.
13 Code §§ 1791.1(a) & 1792; however, the Class Vehicles do not have the quality that a buyer would
14 reasonably expect.

15 433. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or
16 “implied warranty that goods are merchantable” means that the consumer goods meet each of the
17 following:

- 18 A. Pass without objection in the trade under the contract description.
- 19 B. Are fit for the ordinary purposes for which such goods are used.
- 20 C. Are adequately contained, packaged, and labeled.
- 21 D. Conform to the promises or affirmations of fact made on the container or
22 label.

23 434. The Class Vehicles would not pass without objection in the automotive trade
24 because they share a common design defect in that they were materially different from vehicles
25 Defendants submitted for emissions testing and/or did not comply with emissions regulations when
26 being driven in Sport Plus mode, which conceals the vehicles’ true emissions and overstates their
27 fuel economy.

1 435. Class Vehicles are not adequately labeled because the labeling fails to disclose the
2 fact that they are defective.

3 436. In the various channels of information through which Defendants sold and marketed
4 Class Vehicles, Defendants failed to disclose material information concerning the Class Vehicles,
5 which it had a duty to disclose. Defendants had a duty to disclose the defect because, as detailed
6 above: (a) Defendants knew about the defect; (b) Defendants had exclusive knowledge of material
7 facts not known to the general public or the other California State Class members; (c) Defendants
8 actively concealed material facts from the general public and California State Class members
9 concerning the Class Vehicles' true emissions and fuel economy; and (d) Defendants made partial
10 representations about the Class Vehicles that were misleading because they did not disclose the full
11 truth. As detailed above, Defendants knew the information concerning the defect at the time of
12 advertising and selling the Class Vehicles, all of which was intended to induce consumers to
13 purchase the Class Vehicles.

14 437. Defendants breached the implied warranty of merchantability by manufacturing and
15 selling Class Vehicles that are defective. Furthermore, this defect has caused members of the
16 California State Class to not receive the benefit of their bargain and have caused the Class Vehicles
17 to depreciate in value.

18 438. Plaintiffs and members of the California State Class have been damaged as a result
19 of the diminished value of Defendants' products.

20 439. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and other members of the
21 California State Class are entitled to damages and other legal and equitable relief including, at their
22 election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of
23 their Class Vehicles.

24 440. Under Cal. Civ. Code § 1794, Plaintiffs and the other members of the California
25 State Class are entitled to costs and attorneys' fees.

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1 **CALIFORNIA COUNT VII:**
2 **Violation of the Song-Beverly Consumer Protection Act, Breach of Express Warranty**
3 **Cal Civ. Code § 1790, et seq.**
4 **(On Behalf of the California State Class)**

5 441. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
6 set forth herein.

7 442. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isaías Iñiguez,
8 Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas
9 (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the
10 California State Class against all Defendants.

11 443. Plaintiffs and Members of the California State Class who purchased or leased the
12 Class Vehicles in California are “buyers” within the meaning of California Civil Code § 1791(b).

13 444. The Class Vehicles are “consumer goods” within the meaning of California Civil
14 Code § 1791(a).

15 445. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
16 California Civil Code § 1791(j).

17 446. Defendants made express warranties to members of the California State Class
18 within the meaning of California Civil Code §§ 1791.2 and 1793.2, as described above.

19 447. As set forth above in detail, the Class Vehicles are inherently defective in that they
20 were materially different from vehicles Defendants submitted for emissions testing and/or did not
21 comply with emissions regulations when being driven in Sport Plus mode. This defect substantially
22 impairs the use and value of the Class Vehicles to reasonable consumers.

23 448. As a result of Defendants’ breach of their express warranties, members of the
24 California State Class received goods whose defect substantially impairs their value to Plaintiffs
25 and the other members of the California State Class. Plaintiffs and members of the California State
26 Class have been damaged as a result of, *inter alia*, the diminished value of Defendants’ products.

27 449. Pursuant to California Civil Code §§ 1793.2 & 1794, Plaintiffs and members of the
28 California State Class are entitled to damages and other legal and equitable relief including, at their

1 election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of
2 their Class Vehicles.

3 450. Pursuant to California Civil Code § 1794, the Class is entitled to costs and
4 attorneys' fees.

5 **CALIFORNIA COUNT VIII:**
6 **Breach of Express California Emissions Warranties**
7 **Cal. Civ. Code § 1793.2, et seq.**
8 **(On Behalf of the California State Class)**

9 451. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
10 fully set forth herein.

11 452. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isaías Iñiguez,
12 Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas
13 (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the
14 California State Class against all Defendants.

15 453. Each Class Vehicle is covered by express California Emissions Warranties as a
16 matter of law. *See* Cal. Health & Safety Code § 43205; Cal. Code Regs. tit. 13, § 2037.

17 454. The express California Emissions Warranties generally provide "that the vehicle or
18 engine is . . . [d]esigned, built, and equipped so as to conform with all applicable regulations
19 adopted by the Air Resources Board." *Id.* This provision applies without any time or mileage
20 limitation. *See id.*

21 455. The California Emissions Warranties also specifically warrant consumers against
22 any performance failure of the emissions control system for three years or 50,000 miles, whichever
23 occurs first, and against any defect in any emission-related part for seven years or 70,000 miles,
24 whichever occurs first. *See id.*

25 456. California law imposes express duties "on the manufacturer of consumer goods sold
26 in this state and for which the manufacturer has made an express warranty." Cal. Civ. Code
27 § 1793.2.

28 457. Among those duties, "[i]f the manufacturer or its representative in this state is
unable to service or repair a new motor vehicle . . . to conform to the applicable express warranties

1 after a reasonable number of attempts, the manufacturer shall either promptly replace the new
2 motor vehicle or promptly make restitution to the buyer” at the vehicle owner’s option. *See* Cal.
3 Civ. Code § 1793.2(d)(2).

4 458. Plaintiffs and Class members are excused from the requirement to “deliver
5 nonconforming goods to the manufacturer’s service and repair facility within this state” because
6 Defendants are refusing to accept them and delivery of the California Vehicles “cannot reasonably
7 be accomplished.” Cal. Civ. Code § 1793.2(c).

8 459. This Complaint is written notice of nonconformity to Defendants and “shall
9 constitute return of the goods.” *Id.*

10 460. Plaintiffs and California State Class members are excused from any requirement
11 that they allow a “reasonable number of attempts” to bring California Vehicles into conformity
12 with their California Emissions Warranties based on futility because FCA has no ability to do so at
13 this time.

14 461. In addition to all other damages and remedies, California State Class members are
15 entitled to “recover a civil penalty of up to two times the amount of damages” for the
16 aforementioned violation. *See* Cal. Civ. Code § 1794(e)(1).

17 **CALIFORNIA COUNT IX:**
18 **Failure to Recall/Retrofit**
19 **(On Behalf of the California State Class)**

20 462. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 463. Plaintiffs Ashish Chadha, Ernesto Del Barrio, Mallen Fajardo, Isaías Iñiguez,
23 Frederick Jeng, Philipp Novales-Li, Richard Schubert, Luigi Sciabarrasi, and Lawrence Tougas
24 (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the
25 California State Class against all Defendants.

26 464. Defendants manufactured, marketed, distributed, sold, or otherwise placed into the
27 stream of U.S. commerce the Class Vehicles, as set forth above.
28

1 465. Defendants knew or reasonably should have known that the Class Vehicles emit a
2 substantially increased amount of pollution and reasonably should have known that the Class
3 Vehicles were likely to be dangerous when used in a reasonably foreseeable manner.

4 466. Defendants failed to recall the Class Vehicles in a timely manner or warn of the
5 Class Vehicles' heightened emissions.

6 467. A reasonable manufacturer in same or similar circumstances would have timely and
7 properly recalled the Class Vehicles.

8 468. Plaintiffs and California State Class members were harmed by Defendants' failure
9 to recall the Class Vehicles properly and in a timely manner and, as a result, have suffered damages,
10 caused by Defendants' ongoing failure to properly recall, retrofit, and fully repair the Class
11 Vehicles.

12 469. Defendants' failure to timely recall the Class Vehicles was a substantial factor in
13 causing harm to Plaintiffs and California State Class members as alleged herein.

14 **COLORADO COUNT I:**
15 **Violations of the Colorado Consumer Protection Act**
16 **Colo. Rev. Stat. § 6-1-101 *et seq.***
17 **(On Behalf of the Colorado State Class)**

18 470. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

19 471. Plaintiff Cecil Robinson (for the purposes of this count, "Plaintiff") brings this
20 claim on behalf of himself and the Colorado State Class against all Defendants.

21 472. Defendants are "person[s]" under § 6-1-102(6) of the Colorado Consumer
22 Protection Act "Colorado CPA"), Col. Rev. Stat. § 6-1-101, *et seq.*

23 473. Plaintiff and Colorado State Class members are "consumers" for purposes of Col.
24 Rev. Stat § 6-1-113(1)(a) who purchased or leased one or more Class Vehicles.

25 474. The Colorado CPA prohibits deceptive trade practices in the course of a person's
26 business. Defendants engaged in deceptive trade practices prohibited by the Colorado CPA,
27 including: (1) knowingly making a false representation as to the characteristics, uses, and benefits
28 of the Class Vehicles that had the capacity or tendency to deceive Colorado State Class members;
(2) representing that the Class Vehicles are of a particular standard, quality, and grade even though

1 Defendants knew or should have known they are not; (3) advertising the Class Vehicles with the
2 intent not to sell them as advertised; and (4) failing to disclose material information concerning the
3 Class Vehicles that was known to Defendants at the time of advertisement or sale with the intent to
4 induce Colorado State Class members to purchase, lease or retain the Class Vehicles.

5 475. In the course of their business, Defendants concealed and suppressed material facts
6 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
7 emissions testing that were different from production vehicles and/or (b) falsely attesting that
8 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
9 did not.

10 476. Plaintiff and Colorado State Class members had no way of discerning that
11 Defendants' representations were false and misleading because Plaintiff and the Colorado State
12 Class members did not have access to Defendants' emissions certification test vehicles and
13 Defendants' emissions-related hardware.

14 477. Defendants thus violated the Colorado CPA by, at minimum: representing that Class
15 Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that
16 Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
18 transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 478. Defendants intentionally and knowingly misrepresented material facts regarding the
21 Class Vehicles with intent to mislead the Colorado State Class.

22 479. Defendants knew or should have known that their conduct violated the Colorado
23 CPA.

24 480. Defendants owed the Colorado State Class a duty to disclose the illegality and
25 public health risks, the true nature of the Class Vehicles, because Defendants:

26 A. possessed exclusive knowledge that they were manufacturing, selling, and
27 distributing vehicles throughout the United States that did not perform as advertised;
28

1 B. intentionally concealed the foregoing from regulators and Colorado State
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles' fuel economy
4 and emissions, while purposefully withholding material facts that contradicted these
5 representations.

6 481. Defendants' concealment of the Class Vehicles' true fuel consumption and
7 emissions was material to Plaintiff and the Colorado State Class.

8 482. Defendants' unfair or deceptive acts or practices were likely to and did in fact
9 deceive regulators and reasonable consumers, including the Colorado State Class, about the true
10 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
11 brands, the devaluing of environmental cleanliness and integrity at Defendant companies, and the
12 true value of the Class Vehicles.

13 483. Defendants' violations present a continuing risk to the Colorado State Class as well
14 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
15 public interest.

16 484. Plaintiff and the Colorado State Class suffered ascertainable loss and actual
17 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
18 and failure to disclose material information. Defendants had an ongoing duty to all their customers
19 to refrain from unfair and deceptive practices under the Colorado CPA. All owners and lessees of
20 Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and
21 practices made in the course of Defendants' business.

22 **COLORADO COUNT II:**
23 **Breach of Express Warranty**
24 **Colo. Rev. Stat. §§ 4-2-313 and 4-2.5-210**
25 **(On Behalf of the Colorado State Class)**

26 485. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
27 fully set forth herein.

28 486. Plaintiff Cecil Robinson (for the purposes of this count, "Plaintiff") brings this
claim on behalf of himself and the Colorado State Class against all Defendants.

1 487. Defendants are and were at all relevant times “merchant[s]” with respect to motor
2 vehicles under Colo. Rev. Stat. §§ 4-2-104(1) and 4-2.5-103(3), and “sellers” of motor vehicles
3 under § 4-2-103(1)(d).

4 488. With respect to leases, Defendants are and were at all relevant times “lessors” of
5 motor vehicles under Colo. Rev. Stat. § 4-2.5-103(1)(p).

6 489. The Class Vehicles are and were at all relevant times “goods” within the meaning of
7 Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).

8 490. In connection with the purchase or lease of each one of its new vehicles, Defendants
9 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
10 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

11 491. Defendants also made numerous representations, descriptions, and promises to
12 Colorado State Class members regarding the performance and emission controls of their vehicles.

13 492. For example, Defendants included in the warranty booklets for some or all of the
14 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
15 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
16 from defects in material and workmanship which would cause it not to meet those standards.”

17 493. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
18 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
19 Warranty.”

20 494. The EPA requires vehicle manufacturers to provide a Performance Warranty with
21 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
22 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
23 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
24 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
25 emission control components are covered for the first eight years or 80,000 miles (whichever
26 comes first). These major emission control components subject to the longer warranty include the
27 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
28 device or computer.

1 495. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 496. As manufacturers of light-duty vehicles, Defendants were required to provide these
10 warranties to purchasers or lessees of Class Vehicles.

11 497. Defendants' warranties formed a basis of the bargain that was reached when
12 consumers purchased or leased Class Vehicles.

13 498. Despite the existence of warranties, Defendants failed to inform Colorado State
14 Class members that the Class Vehicles were defective and were intentionally designed and
15 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
16 disclosed to regulators and represented to consumers who purchased or leased them, and
17 Defendants failed to fix the defective emission components free of charge.

18 499. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 500. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 501. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
25 insufficient to make Colorado State Class members whole and because Defendants have failed
26 and/or have refused to adequately provide the promised remedies within a reasonable time.

1 502. Accordingly, recovery by Colorado State Class members is not restricted to the
2 limited warranty promising to repair and correct Defendants’ defect in materials and workmanship,
3 and they seek all remedies as allowed by law.

4 503. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
5 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
6 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Colorado State Class members were therefore induced
8 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 504. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
10 through the limited remedy of repairing and correcting Defendants’ defect in materials and
11 workmanship as many incidental and consequential damages have already been suffered because of
12 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
13 failure to provide such limited remedy within a reasonable time, and any limitation on Colorado
14 State Class members’ remedies would be insufficient to make them whole.

15 505. Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiff and
16 Colorado State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 506. Defendants were provided reasonable notice of these issues by way of a letter sent
20 by Plaintiffs as well as the regulators’ investigations.

21 507. As a direct and proximate result of Defendants’ breach of express warranties,
22 Colorado State Class members have been damaged in an amount to be determined at trial.

23 **COLORADO COUNT III:**
24 **Breach of Implied Warranty of Merchantability**
25 **Colo. Rev. Stat. §§ 4-2-314 and 4-2.5-212**
26 **(On Behalf of the Colorado State Class)**

27 508. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 509. Plaintiff Cecil Robinson (for the purposes of this count, “Plaintiff”) brings this
2 claim on behalf of himself and the Colorado State Class against all Defendants.

3 510. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under Colo. Rev. Stat. §§ 4-2-104(1) and 4-2.5-103(3), and “sellers” of motor vehicles
5 under § 4-2-103(1)(d).

6 511. With respect to leases, Defendants are and were at all relevant times “lessors” of
7 motor vehicles under Colo. Rev. Stat. § 4-2.5-103(1)(p).

8 512. The Class Vehicles are and were at all relevant times “goods” within the meaning of
9 Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).

10 513. A warranty that the Class Vehicles were in merchantable condition and fit for the
11 ordinary purpose for which vehicles are used is implied by law pursuant to Colo. Rev. Stat.
12 §§ 4-2-313 and 4-2.5-212.

13 514. These Class Vehicles, when sold or leased and at all times thereafter, were
14 materially different from vehicles Defendants submitted for emissions testing and/or did not
15 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
16 fit for the ordinary purpose for which vehicles are used.

17 515. Defendants were provided reasonable notice of these issues by way of a letter sent
18 by Plaintiffs as well as the regulators’ investigations.

19 516. As a direct and proximate result of Defendants’ breach of the implied warranty of
20 merchantability, Plaintiff and Colorado State Class members have been damaged in an amount to
21 be proven at trial.

22 **CONNECTICUT COUNT I:**
23 **Violations of Connecticut Unlawful Trade Practice Act**
24 **Conn. Gen. Stat. § 42-110a, *et seq.***
(On Behalf of the Connecticut State Class)

25 517. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
26 set forth herein.

27 518. Plaintiff Frank Cohen (for the purposes of this count, “Plaintiff”) brings this claim
28 on behalf of himself and the Connecticut State Class against all Defendants.

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

4 520. Defendants are “person[s]” within the meaning of Conn. Gen. Stat. § 42-110a(3).

5 521. Defendants engaged in “trade” or “commerce” within the meaning of Conn. Gen.
6 Stat. § 42-110a(4).

7 522. Defendants participated in deceptive trade practices that violated the Connecticut
8 UTPA as described herein.

9 523. In the course of their business, Defendants concealed and suppressed material facts
10 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
11 emissions testing that were different from production vehicles and/or (b) falsely attesting that
12 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
13 did not.

14 524. Plaintiff and Connecticut State Class members had no way of discerning that
15 Defendants’ representations were false and misleading because Plaintiff and Connecticut State
16 Class members did not have access to Defendants’ emissions certification test vehicles and
17 Defendants’ emissions-related hardware was extremely sophisticated technology.

18 525. Defendants thus violated the Connecticut UTPA by, at minimum: employing
19 deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or
20 omission of any material fact with intent that others rely upon such concealment, suppression or
21 omission, in connection with the sale of Class Vehicles.

22 526. Defendants intentionally and knowingly misrepresented material facts regarding the
23 Class Vehicles with intent to mislead Plaintiff and the Connecticut State Class.

24 527. Defendants knew or should have known that their conduct violated the Connecticut
25 UTPA.

26 528. Defendants owed Plaintiff and the Connecticut State Class a duty to disclose the
27 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:
28

1 A. possessed exclusive knowledge that they were manufacturing, selling, and
2 distributing vehicles throughout the United States that did not perform as advertised;

3 B. intentionally concealed the foregoing from regulators, Plaintiff, and
4 Connecticut State Class members; and/or

5 C. made incomplete representations about the Class Vehicles' fuel economy
6 and emissions while purposefully withholding material facts that contradicted these
7 representations.

8 529. Defendants' concealment of the Class Vehicles' true fuel consumption and
9 emissions was material to Plaintiff and the Connecticut State Class.

10 530. Defendants' unfair or deceptive acts or practices were likely to and did in fact
11 deceive regulators and reasonable consumers, including Plaintiff and the Connecticut State Class,
12 about the true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
13 Defendants' brands, and the true value of the Class Vehicles.

14 531. Plaintiff and the Connecticut State Class suffered ascertainable loss and actual
15 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
16 and failure to disclose material information.

17 532. Plaintiff and the Connecticut State Class seek monetary relief against Defendants in
18 an amount to be determined at trial. Plaintiff and the Connecticut State Class also seek punitive
19 damages because Defendants engaged in aggravated and outrageous conduct.

20 533. Plaintiff and the Connecticut State Class also seek an order enjoining Defendants'
21 unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief
22 available under the Connecticut CFA.

23 534. Defendants had an ongoing duty to all their customers to refrain from unfair and
24 deceptive practices under the Connecticut UTPA. All owners of Class Vehicles suffered
25 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
26 course of Defendants' business.

27
28

1 535. Defendants’ violations present a continuing risk to Plaintiff and the Connecticut
2 State Class, as well as to the general public. Defendants’ unlawful acts and practices complained of
3 herein affect the public interest.

4 536. As a direct and proximate result of Defendants’ violations of the Connecticut
5 UTPA, Plaintiff and the Connecticut State Class have suffered injury-in-fact and/or actual damage.

6 537. Class members are entitled to recover their actual damages, punitive damages, and
7 attorneys’ fees pursuant to Conn. Gen. Stat. § 42-110g. Defendants acted with a reckless
8 indifference to another’s rights or wanton or intentional violation to another’s rights and otherwise
9 engaged in conduct amounting to a particularly aggravated, deliberate disregard of the rights of
10 others.

11 **CONNECTICUT COUNT II:**
12 **Breach of Express Warranty**
13 **Conn. Gen. Stat. Ann. § 42A-2-313**
14 **(On Behalf of the Connecticut State Class)**

15 538. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
16 fully set forth herein.

17 539. Plaintiff Frank Cohen (for the purposes of this count, “Plaintiff”) brings this claim
18 on behalf of himself and the Connecticut State Class against all Defendants.

19 540. Defendants are and were at all relevant times “merchant[s]” with respect to motor
20 vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

21 541. In connection with the purchase or lease of each one of its new vehicles, Defendants
22 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
23 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

24 542. Defendants also made numerous representations, descriptions, and promises to
25 Plaintiff and Connecticut State Class members regarding the performance and emission controls of
26 their vehicles.

27 543. For example, Defendants included in the warranty booklets for some or all of the
28 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the

1 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
2 from defects in material and workmanship which would cause it not to meet those standards.”

3 544. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 545. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
8 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles (whichever
12 comes first). These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 546. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
17 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
18 Design and Defect Warranty required by the EPA covers repair of emission control or emission
19 related parts, which fail to function or function improperly because of a defect in materials or
20 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
21 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
22 comes first.

23 547. As manufacturers of light-duty vehicles, Defendants were required to provide these
24 warranties to purchasers or lessees of Class Vehicles.

25 548. Defendants’ warranties formed a basis of the bargain that was reached when
26 consumers purchased or leased Class Vehicles.

27 549. Despite the existence of warranties, Defendants failed to inform Plaintiff and
28 Connecticut State Class members that the Class Vehicles were defective and were intentionally

1 designed and manufactured to emit more pollution and achieve worse fuel economy on the road
2 than what was disclosed to regulators and represented to consumers who purchased or leased them,
3 and Defendants failed to fix the defective emission components free of charge.

4 550. Defendants breached the express warranty promising to repair and correct
5 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
6 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

7 551. Affording Defendants a reasonable opportunity to cure their breach of written
8 warranties would be unnecessary and futile here.

9 552. Furthermore, the limited warranty promising to repair and correct Defendants'
10 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
11 insufficient to make Plaintiff and Connecticut State Class members whole and because Defendants
12 have failed and/or have refused to adequately provide the promised remedies within a reasonable
13 time.

14 553. Accordingly, recovery by Plaintiff and Connecticut State Class members is not
15 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
16 and workmanship, and they seek all remedies as allowed by law.

17 554. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
18 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
19 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
20 material facts regarding the Class Vehicles. Plaintiff and Connecticut State Class members were
21 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

22 555. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
23 through the limited remedy of repairing and correcting Defendants' defect in materials and
24 workmanship as many incidental and consequential damages have already been suffered because of
25 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
26 failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff's
27 and Connecticut State Class members' remedies would be insufficient to make them whole.
28

1 556. Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiff and
2 Connecticut State Class members assert, as additional and/or alternative remedies, the revocation
3 of acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
4 currently owned or leased, and for such other incidental and consequential damages as allowed.

5 557. Defendants were provided reasonable notice of these issues by way of a letter sent
6 by Plaintiffs as well as the regulators’ investigations.

7 558. As a direct and proximate result of Defendants’ breach of express warranties,
8 Plaintiff and Connecticut State Class members have been damaged in an amount to be determined
9 at trial.

10 **CONNECTICUT COUNT III:**
11 **Breach of Implied Warranty of Merchantability**
12 **Conn. Gen. Stat. Ann. § 42A-2-314**
13 **(On Behalf of the Connecticut State Class)**

14 559. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 560. Plaintiff Frank Cohen (for the purposes of this count, “Plaintiff”) brings this claim
17 on behalf of himself and the Connecticut State Class against all Defendants.

18 561. Defendants are and were at all relevant times “merchant[s]” with respect to motor
19 vehicles under Conn. Gen. Stat. Ann. § 42a-2-104(1).

20 562. A warranty that the Class Vehicles were in merchantable condition and fit for the
21 ordinary purpose for which vehicles are used is implied by law pursuant to Conn. Gen. Stat. Ann.
22 § 42a-2-314.

23 563. These Class Vehicles, when sold or leased and at all times thereafter, were
24 materially different from vehicles Defendants submitted for emissions testing and/or did not
25 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
26 fit for the ordinary purpose for which vehicles are used.

27 564. Defendants were provided reasonable notice of these issues by way of a letter sent
28 by Plaintiffs as well as the regulators’ investigations.

1 565. As a direct and proximate result of Defendants’ breach of the implied warranty of
2 merchantability, Plaintiff and Connecticut State Class members have been damaged in an amount
3 to be proven at trial.

4 **DELAWARE COUNT I:**
5 **Violations of the Delaware Consumer Fraud Act**
6 **6 Del. Code § 2513 *et seq.***
7 **(On Behalf of the Delaware State Class)**

8 566. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

9 567. This count is brought on behalf of the Delaware State Class against all Defendants.

10 568. Defendants are “person[s]” within the meaning of 6 Del. Code § 2511(7).

11 569. The Delaware Consumer Fraud Act (“Delaware CFA”) prohibits the “act, use or
12 employment by any person of any deception, fraud, false pretense, false promise,
13 misrepresentation, or the concealment, suppression, or omission of any material fact with intent
14 that others rely upon such concealment, suppression or omission, in connection with the sale, lease
15 or advertisement of any merchandise, whether or not any person has in fact been misled, deceived
16 or damaged thereby.” 6 Del. Code § 2513(a).

17 570. In the course of their business, Defendants concealed and suppressed material facts
18 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
19 emissions testing that were different from production vehicles and/or (b) falsely attesting that
20 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
21 did not.

22 571. Delaware State Class members had no way of discerning that Defendants’
23 representations were false and misleading because the Delaware State Class members did not have
24 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
25 hardware was extremely sophisticated technology.

26 572. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
27 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
28 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a

1 transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 573. Defendants intentionally and knowingly misrepresented material facts regarding the
4 Class Vehicles with intent to mislead the Delaware State Class.

5 574. Defendants knew or should have known that their conduct violated the Delaware
6 CFA.

7 575. Defendants owed the Delaware State Class a duty to disclose the illegality and
8 public health risks, the true nature of the Class Vehicles, because Defendants:

9 A. possessed exclusive knowledge that they were manufacturing, selling, and
10 distributing vehicles throughout the United States that did not perform as advertised;

11 B. intentionally concealed the foregoing from regulators and Delaware State
12 Class members; and/or

13 C. made incomplete representations about the Class Vehicles' fuel economy
14 and emissions while purposefully withholding material facts that contradicted these
15 representations.

16 576. Defendants' concealment of the Class Vehicles' true fuel consumption and
17 emissions was material to the Delaware State Class.

18 577. Defendants' unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including the Delaware State Class, about the true
20 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of Defendants'
21 brands, and the true value of the Class Vehicles.

22 578. Defendants' violations present a continuing risk to the Delaware Class as well as to
23 the general public. Defendants' unlawful acts and practices complained of herein affect the public
24 interest.

25 579. The Delaware State Class suffered ascertainable loss and actual damages as a direct
26 and proximate result of Defendants' misrepresentations and concealment of and failure to disclose
27 material information. Defendants had an ongoing duty to all their customers to refrain from unfair
28 and deceptive practices under the Delaware CFA. All owners of Class Vehicles suffered

1 ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made in the
2 course of Defendants’ business.

3 580. As a direct and proximate result of Defendants’ violations of the Delaware CFA, the
4 Delaware State Class have suffered injury-in-fact and/or actual damage.

5 581. The Delaware State Class seeks damages under the Delaware CFA for injury
6 resulting from the direct and natural consequences of Defendants’ unlawful conduct. *See, e.g.,*
7 *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). The Delaware State Class also
8 seeks an order enjoining Defendants’ unfair, unlawful, and/or deceptive practices, declaratory
9 relief, attorneys’ fees, and any other just and proper relief available under the Delaware CFA.

10 582. Defendants engaged in gross, oppressive or aggravated conduct justifying the
11 imposition of punitive damages.

12 **DELAWARE COUNT II:**
13 **Breach of Express Warranty**
14 **6 Del. Code §§ 2-313 and 2A-210**
15 **(On Behalf of the Delaware State Class)**

16 583. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
17 fully set forth herein.

18 584. This count is brought on behalf of the Delaware State Class against all Defendants.

19 585. Defendants are and were at all relevant times “merchant[s]” with respect to motor
20 vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3), and “sellers” of motor vehicles under
21 § 2-103(1)(d).

22 586. With respect to leases, Defendants are and were at all relevant times “lessors” of
23 motor vehicles under 6 Del. C. § 2A-103(1)(p).

24 587. The Class Vehicles are and were at all relevant times “goods” within the meaning of
25 6 Del. C. §§ 2-105(1) and 2A-103(1)(h).

26 588. In connection with the purchase or lease of each one of its new vehicles, Defendants
27 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
28 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

1 589. Defendants also made numerous representations, descriptions, and promises to
2 Delaware State Class members regarding the performance and emission controls of their vehicles.

3 590. For example, Defendants included in the warranty booklets for some or all of the
4 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
5 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
6 from defects in material and workmanship which would cause it not to meet those standards.”

7 591. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
8 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
9 Warranty.”

10 592. The EPA requires vehicle manufacturers to provide a Performance Warranty with
11 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
12 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
13 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
14 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
15 emission control components are covered for the first eight years or 80,000 miles (whichever
16 comes first). These major emission control components subject to the longer warranty include the
17 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
18 device or computer.

19 593. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
20 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
21 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
22 Design and Defect Warranty required by the EPA covers repair of emission control or emission
23 related parts, which fail to function or function improperly because of a defect in materials or
24 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
25 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
26 comes first.

27 594. As manufacturers of light-duty vehicles, Defendants were required to provide these
28 warranties to purchasers or lessees of Class Vehicles.

1 595. Defendants' warranties formed a basis of the bargain that was reached when
2 consumers purchased or leased Class Vehicles.

3 596. Despite the existence of warranties, Defendants failed to inform Delaware State
4 Class members that the Class Vehicles were defective and were intentionally designed and
5 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
6 disclosed to regulators and represented to consumers who purchased or leased them, and
7 Defendants failed to fix the defective emission components free of charge.

8 597. Defendants breached the express warranty promising to repair and correct
9 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
10 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

11 598. Affording Defendants a reasonable opportunity to cure their breach of written
12 warranties would be unnecessary and futile here.

13 599. Furthermore, the limited warranty promising to repair and correct Defendants'
14 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
15 insufficient to make Delaware State Class members whole and because Defendants have failed
16 and/or have refused to adequately provide the promised remedies within a reasonable time.

17 600. Accordingly, recovery by the Delaware State Class members is not restricted to the
18 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
19 and they seek all remedies as allowed by law.

20 601. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
21 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
22 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
23 material facts regarding the Class Vehicles. Delaware State Class members were therefore induced
24 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

25 602. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
26 through the limited remedy of repairing and correcting Defendants' defect in materials and
27 workmanship as many incidental and consequential damages have already been suffered because of
28 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued

1 failure to provide such limited remedy within a reasonable time, and any limitation on Delaware
2 State Class members' remedies would be insufficient to make them whole.

3 603. Finally, because of Defendants' breach of warranty as set forth herein, Delaware
4 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
5 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
6 owned or leased, and for such other incidental and consequential damages as allowed.

7 604. Defendants were provided reasonable notice of these issues by way of a letter sent
8 by Plaintiffs as well as the regulators' investigations.

9 605. As a direct and proximate result of Defendants' breach of express warranties,
10 Delaware State Class members have been damaged in an amount to be determined at trial.

11 **DELAWARE COUNT III:**
12 **Breach of Implied Warranty of Merchantability**
13 **6. Del. Code §§ 2-314 and 7-2A-212**
14 **(On Behalf of the Delaware State Class)**

15 606. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 607. This count is brought on behalf of the Delaware State Class against all Defendants.

18 608. Defendants are and were at all relevant times "merchant[s]" with respect to motor
19 vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3), and "sellers" of motor vehicles under
20 § 2-103(1)(d).

21 609. With respect to leases, Defendants are and were at all relevant times "lessors" of
22 motor vehicles under 6 Del. C. § 2A-103(1)(p).

23 610. The Class Vehicles are and were at all relevant times "goods" within the meaning of
24 6 Del. C. §§ 2-105(1) and 2A-103(1)(h).

25 611. A warranty that the Class Vehicles were in merchantable condition and fit for the
26 ordinary purpose for which vehicles are used is implied by law pursuant to 6 Del. C. §§ 2-314 and
27 2A-212.

28 612. These Class Vehicles, when sold or leased and at all times thereafter, were
materially different from vehicles Defendants submitted for emissions testing and/or did not

1 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
2 fit for the ordinary purpose for which vehicles are used.

3 613. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 614. As a direct and proximate result of Defendants' breach of the implied warranty of
6 merchantability, Delaware State Class members have been damaged in an amount to be proven at
7 trial.

8 **DISTRICT OF COLUMBIA COUNT I:**
9 **Violations of the Consumer Protection Procedures Act**
10 **D.C. Code § 28-3901 *et seq.***
11 **(On Behalf of the District of Columbia Class)**

12 615. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

13 616. This count is brought on behalf of the District of Columbia Class against all
14 Defendants.

15 617. Defendants are "person[s]" under the Consumer Protection Procedures Act
16 ("District of Columbia CPPA"), D.C. Code § 28-3901(a)(1).

17 618. Class members are "consumers," as defined by D.C. Code § 28-3901(1)(2), who
18 purchased or leased one or more Class Vehicles.

19 619. Defendants' actions as set forth herein constitute "trade practices" under D.C. Code
20 § 28-3901.

21 620. Defendants participated in unfair or deceptive acts or practices that violated the
22 District of Columbia CPPA. By willfully failing to disclose and actively concealing that they
23 submitted vehicles for emissions testing that were different from production vehicles and falsely
24 attested that Sport Plus code could pass emissions tests, Defendants engaged in unfair or deceptive
25 practices prohibited by the District of Columbia CPPA, D.C. Code § 28-3901, *et seq.*, including:
26 (1) representing that the Class Vehicles have characteristics, uses, benefits, and qualities which
27 they do not have; (2) representing that the Class Vehicles are of a particular standard, quality, and
28 grade when they are not; (3) advertising the Class Vehicles with the intent not to sell them as
advertised; (4) representing that the subject of a transaction involving the Class Vehicles has been

1 supplied in accordance with a previous representation when it has not; (5) misrepresenting as to a
2 material fact which has a tendency to mislead; and (6) failing to state a material fact when such
3 failure tends to mislead.

4 621. In the course of their business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
6 emissions testing that were different from production vehicles and/or (b) falsely attesting that
7 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
8 did not.

9 622. District of Columbia Class members had no way of discerning that Defendants'
10 representations were false and misleading because the District of Columbia Class Members did not
11 have access to Defendants' emissions certification test vehicles and Defendants' emissions-related
12 hardware was extremely sophisticated technology.

13 623. Defendants thus violated the District of Columbia CPPA by, at minimum:
14 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not
15 have; representing that Class Vehicles are of a particular standard, quality, and grade when they are
16 not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and
17 representing that the subject of a transaction involving Class Vehicles has been supplied in
18 accordance with a previous representation when it has not.

19 624. Defendants intentionally and knowingly misrepresented material facts regarding the
20 Class Vehicles with intent to mislead the District of Columbia Class.

21 625. Defendants knew or should have known that their conduct violated the District of
22 Columbia CPPA.

23 626. Defendants the District of Columbia Class a duty to disclose the illegality and public
24 health risks, the true nature of the Class Vehicles, because Defendants:

25 A. possessed exclusive knowledge that they were manufacturing, selling, and
26 distributing vehicles throughout the United States that did not perform as advertised;

27 B. intentionally concealed the foregoing from regulators and District of
28 Columbia Class members; and/or

1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 627. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
5 consumption and emissions were material to the District of Columbia Class.

6 628. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the District of Columbia Class, about the
8 true environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
9 brands, and the true value of the Class Vehicles.

10 629. Defendants' violations present a continuing risk to the District of Columbia Class as
11 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
12 the public interest.

13 630. The District of Columbia Class suffered ascertainable loss and actual damages as a
14 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
15 disclose material information. Defendants had an ongoing duty to all their customers to refrain
16 from unfair and deceptive practices under the District of Columbia CPPA. All owners of Class
17 Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and
18 practices made in the course of Defendants' business.

19 631. As a direct and proximate result of Defendants' violations of the District of
20 Columbia CPPA, the District of Columbia Class have suffered injury-in-fact and/or actual damage.

21 632. The District of Columbia Class are entitled to recover treble damages or \$1,500,
22 whichever is greater, punitive damages, reasonable attorneys' fees, and any other relief the Court
23 deems proper, under D.C. Code § 28-3901.

24 633. The District of Columbia Class seeks punitive damages against Defendants because
25 their conduct evidences egregious conduct. Defendants egregiously misrepresented the fuel
26 economy and emissions of the Class Vehicles and concealed material facts that only they knew.
27 Defendants' unlawful conduct warrants punitive damages.
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**DISTRICT OF COLUMBIA COUNT II:
Breach of Express Warranty
D.C. Code §§ 28:2-313 and 28:2A-210
(On Behalf of the District of Columbia Class)**

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634. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

635. This count is brought on behalf of the District of Columbia Class against all Defendants.

636. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under D.C. Code §§ 28:2-104(1) and 28:2A-103(a)(20), and “sellers” of motor vehicles under § 28:2-103(1)(d).

637. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under D.C. Code § 28:2A-103(a)(16).

638. The Class Vehicles are and were at all relevant times “goods” within the meaning of D.C. Code §§ 28:2-105(1) and 28:2A-103(a)(8).

639. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

640. Defendants also made numerous representations, descriptions, and promises to District of Columbia Class members regarding the performance and emission controls of their vehicles.

641. For example, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free from defects in material and workmanship which would cause it not to meet those standards.”

642. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1 643. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 644. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 645. As manufacturers of light-duty vehicles, Defendants were required to provide these
19 warranties to purchasers or lessees of Class Vehicles.

20 646. Defendants' warranties formed a basis of the bargain that was reached when
21 consumers purchased or leased Class Vehicles.

22 647. Despite the existence of warranties, Defendants failed to inform District of
23 Columbia Class members that the Class Vehicles were defective and were intentionally designed
24 and manufactured to emit more pollution and achieve worse fuel economy on the road than what
25 was disclosed to regulators and represented to consumers who purchased or leased them, and
26 Defendants failed to fix the defective emission components free of charge.

1 648. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 649. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 650. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
8 insufficient to make District of Columbia Class members whole and because Defendants have
9 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

10 651. Accordingly, recovery by District of Columbia Class members is not restricted to
11 the limited warranty promising to repair and correct Defendants' defect in materials and
12 workmanship, and they seek all remedies as allowed by law.

13 652. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
14 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
15 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. District of Columbia Class members were therefore
17 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 653. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
19 through the limited remedy of repairing and correcting Defendants' defect in materials and
20 workmanship as many incidental and consequential damages have already been suffered because of
21 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
22 failure to provide such limited remedy within a reasonable time, and any limitation on District of
23 Columbia Class members' remedies would be insufficient to make them whole.

24 654. Finally, because of Defendants' breach of warranty as set forth herein, District of
25 Columbia Class members assert, as additional and/or alternative remedies, the revocation of
26 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
27 currently owned or leased, and for such other incidental and consequential damages as allowed.
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1 655. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators’ investigations.

3 656. As a direct and proximate result of Defendants’ breach of express warranties,
4 District of Columbia Class members have been damaged in an amount to be determined at trial.

5 **DISTRICT OF COLUMBIA COUNT III:**
6 **Breach of Implied Warranty of Merchantability**
7 **D.C. Code §§ 28:2-314 and 28:2A-212**
8 **(On Behalf of the District of Columbia Class)**

9 657. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 658. This count is brought on behalf of the District of Columbia Class against all
12 Defendants.

13 659. Defendants are and were at all relevant times “merchant[s]” with respect to motor
14 vehicles under D.C. Code §§ 28:2-104(1) and 28:2A-103(a)(20), and “sellers” of motor vehicles
15 under § 28:2-103(1)(d).

16 660. With respect to leases, Defendants are and were at all relevant times “lessors” of
17 motor vehicles under D.C. Code § 28:2A-103(a)(16).

18 661. The Class Vehicles are and were at all relevant times “goods” within the meaning of
19 D.C. Code §§ 28:2-105(1) and 28:2A-103(a)(8).

20 662. A warranty that the Class Vehicles were in merchantable condition and fit for the
21 ordinary purpose for which vehicles are used is implied by law pursuant to D.C. Code §§ 28:2-314
22 and 28:2A-212.

23 663. These Class Vehicles, when sold or leased and at all times thereafter, were
24 materially different from vehicles Defendants submitted for emissions testing and/or did not
25 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
26 fit for the ordinary purpose for which vehicles are used.

27 664. Defendants were provided reasonable notice of these issues by way of a letter sent
28 by Plaintiffs as well as the regulators’ investigations.

1 665. As a direct and proximate result of Defendants’ breach of the implied warranty of
2 merchantability, District of Columbia Class members have been damaged in an amount to be
3 proven at trial.

4 **FLORIDA COUNT I:**
5 **Violations of the Florida Unfair & Deceptive Trade Practices Act**
6 **Fla. Stat. § 501.201, et seq.**
7 **(On Behalf of the Florida State Class)**

8 666. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

9 667. Plaintiffs Rafael Daniels, Alan Essreg, David Perkins III, Sander Shady, Dyana
10 Spiess, and Orville Taylor (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of
11 themselves and the Florida State Class against all Defendants.

12 668. Plaintiffs and members of the Florida State Class are “consumers” within the
13 meaning of the Florida Unfair and Deceptive Trade Practices Act (“FUDTPA”), Fla. Stat.
14 § 501.203(7).

15 669. Defendants engaged in “trade or commerce” within the meaning of Fla. Stat.
16 § 501.203(8).

17 670. FUDTPA prohibits “[u]nfair methods of competition, unconscionable acts or
18 practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce . . .” Fla.
19 Stat. § 501.204(1). Defendants participated in unfair and deceptive trade practices that violated the
20 FUDTPA as described herein.

21 671. In the course of their business, Defendants concealed and suppressed material facts
22 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
23 emissions testing that were different from production vehicles and/or (b) falsely attesting that
24 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
25 did not.

26 672. Plaintiffs and Florida State Class members had no way of discerning that
27 Defendants’ representations were false and misleading because Plaintiffs and Florida State Class
28 members did not have access to Defendants’ emissions certification test vehicles and Defendants’
emissions-related hardware was extremely sophisticated technology.

1 673. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
5 transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 674. Defendants intentionally and knowingly misrepresented material facts regarding the
8 Class Vehicles with intent to mislead Plaintiffs and the Florida State Class.

9 675. Defendants knew or should have known that their conduct violated the FUDTPA.

10 676. Defendants owed Plaintiffs and the Florida State Class a duty to disclose the
11 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

12 A. possessed exclusive knowledge that they were manufacturing, selling, and
13 distributing vehicles throughout the United States that did not perform as advertised;

14 B. intentionally concealed the foregoing from regulators, Plaintiffs, and Florida
15 State Class members; and/or

16 C. made incomplete representations about the Class Vehicles' fuel economy
17 and emissions, while purposefully withholding material facts from Plaintiffs and the Florida
18 State Class that contradicted these representations.

19 677. Defendants' concealment of the Class Vehicles' true fuel consumption and
20 emissions was material to Plaintiffs and the Florida State Class.

21 678. Defendants' unfair or deceptive acts or practices were likely to and did in fact
22 deceive regulators and reasonable consumers, including Plaintiffs and the Florida State Class,
23 about the true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
24 Defendants' brands, and the true value of the Class Vehicles.

25 679. Defendants' violations present a continuing risk to Plaintiffs and the Florida State
26 Class as well as to the general public. Defendants' unlawful acts and practices complained of herein
27 affect the public interest.
28

1 680. Plaintiffs and the Florida State Class suffered ascertainable loss and actual damages
 2 as a direct and proximate result of Defendants’ misrepresentations and concealment of and failure
 3 to disclose material information. Defendants had an ongoing duty to all their customers to refrain
 4 from unfair and deceptive practices under the FUDTPA. All owners of Class Vehicles suffered
 5 ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made in the
 6 course of Defendants’ business.

7 681. As a direct and proximate result of Defendants’ violations of the FUDTPA,
 8 Plaintiffs and members of the Florida State Class have suffered injury-in-fact and/or actual damage.

9 682. Plaintiffs and the Florida State Class are entitled to recover their actual damages
 10 under Fla. Stat. § 501.211(2) and attorneys’ fees under Fla. Stat. § 501.2105(1).

11 683. Plaintiffs and the Florida State Class also seek an order enjoining Defendants’
 12 unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys’ fees, and any other just
 13 and proper relief available under the FUDTPA.

14 **FLORIDA COUNT II:**
 15 **Breach of Express Warranty**
 16 **F.S.A. §§ 672.313 and 680.21**
 17 **(On Behalf of the Florida State Class)**

18 684. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
 19 fully set forth herein.

20 685. Plaintiffs Rafael Daniels, Alan Essreg, David Perkins III, Sander Shady, Dyana
 21 Spiess, and Orville Taylor (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of
 22 themselves and the Florida State Class against all Defendants.

23 686. Defendants are and were at all relevant times “merchant[s]” with respect to motor
 24 vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and a “seller” of motor vehicles under
 25 § 672.103(1)(d).

26 687. With respect to leases, Defendants are and were at all relevant times “lessors” of
 27 motor vehicles under F.S.A. § 680.1031(1)(p).

28 688. The Class Vehicles are and were at all relevant times “goods” within the meaning of
 F.S.A. §§ 672.105(1) and 680.1031(1)(h).

1 689. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

4 690. Defendants also made numerous representations, descriptions, and promises to
5 Plaintiffs and Florida State Class members regarding the performance and emission controls of
6 their vehicles.

7 691. For example, Defendants included in the warranty booklets for some or all of the
8 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
9 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
10 from defects in material and workmanship which would cause it not to meet those standards.”

11 692. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
12 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
13 Warranty.”

14 693. The EPA requires vehicle manufacturers to provide a Performance Warranty with
15 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
16 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
17 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
18 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
19 emission control components are covered for the first eight years or 80,000 miles (whichever
20 comes first). These major emission control components subject to the longer warranty include the
21 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
22 device or computer.

23 694. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
24 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
25 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
26 Design and Defect Warranty required by the EPA covers repair of emission control or emission
27 related parts, which fail to function or function improperly because of a defect in materials or
28 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 695. As manufacturers of light-duty vehicles, Defendants were required to provide these
4 warranties to purchasers or lessees of Class Vehicles.

5 696. Defendants' warranties formed a basis of the bargain that was reached when
6 consumers purchased or leased Class Vehicles.

7 697. Despite the existence of warranties, Defendants failed to inform Plaintiffs and
8 Florida State Class members that the Class Vehicles were defective and were intentionally
9 designed and manufactured to emit more pollution and achieve worse fuel economy on the road
10 than what was disclosed to regulators and represented to consumers who purchased or leased them,
11 and Defendants failed to fix the defective emission components free of charge.

12 698. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 699. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 700. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
19 insufficient to make Plaintiffs and Florida State Class members whole and because Defendants
20 have failed and/or have refused to adequately provide the promised remedies within a reasonable
21 time.

22 701. Accordingly, recovery by Plaintiffs and Florida State Class members is not
23 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
24 and workmanship, and they seek all remedies as allowed by law.

25 702. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
26 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
27 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
28

1 material facts regarding the Class Vehicles. Plaintiffs and Florida State Class members were
2 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

3 703. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
4 through the limited remedy of repairing and correcting Defendants' defect in materials and
5 workmanship as many incidental and consequential damages have already been suffered because of
6 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
7 failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs'
8 and the Florida State Class members' remedies would be insufficient to make them whole.

9 704. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiffs and
10 Florida State Class members assert, as additional and/or alternative remedies, the revocation of
11 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
12 currently owned or leased, and for such other incidental and consequential damages as allowed.

13 705. Defendants were provided reasonable notice of these issues by way of a letter sent
14 by Plaintiffs as well as the regulators' investigations.

15 706. As a direct and proximate result of Defendants' breach of express warranties,
16 Plaintiffs and Florida State Class members have been damaged in an amount to be determined at
17 trial.

18 **FLORIDA COUNT III:**
19 **Breach of Implied Warranty of Merchantability**
20 **F.S.A. §§ 672.314 and 680.212**
21 **(On Behalf of the Florida State Class)**

22 707. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 708. Plaintiffs Rafael Daniels, Alan Essreg, David Perkins III, Sander Shady, Dyana
25 Spiess, and Orville Taylor (for the purposes of this count, "Plaintiffs") bring this claim on behalf of
26 themselves and the Florida State Class against all Defendants.

27 709. Defendants are and were at all relevant times "merchant[s]" with respect to motor
28 vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and a "seller" of motor vehicles under
§ 672.103(1)(d).

1 710. With respect to leases, Defendants are and were at all relevant times “lessors” of
2 motor vehicles under F.S.A. § 680.1031(1)(p).

3 711. The Class Vehicles are and were at all relevant times “goods” within the meaning of
4 F.S.A. §§ 672.105(1) and 680.1031(1)(h).

5 712. A warranty that the Class Vehicles were in merchantable condition and fit for the
6 ordinary purpose for which vehicles are used is implied by law pursuant to F.S.A. §§ 672.314 and
7 680.212.

8 713. These Class Vehicles, when sold or leased and at all times thereafter, were
9 materially different from vehicles Defendants submitted for emissions testing and/or did not
10 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
11 fit for the ordinary purpose for which vehicles are used.

12 714. Defendants were provided reasonable notice of these issues by way of a letter sent
13 by Plaintiffs as well as the regulators’ investigations.

14 715. As a direct and proximate result of Defendants’ breach of the implied warranty of
15 merchantability, Plaintiffs and Florida State Class members have been damaged in an amount to be
16 proven at trial.

17 **GEORGIA COUNT I:**
18 **Violations of Georgia’s Fair Business Practices Act**
19 **Ga. Code Ann. § 10-1-390 *et seq.***
20 **(On Behalf of the Georgia State Class)**

21 716. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

22 717. Plaintiffs Erik Bloom, Ashish Chadha, Lee Marks, George Pearl, and Cecil
23 Robinson (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and
24 the Georgia State Class against all Defendants.

25 718. The Georgia Fair Business Practices Act (“Georgia FBPA”) declares “[u]nfair or
26 deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices
27 in trade or commerce” to be unlawful, Ga. Code. Ann. § 10-1-393(a), including but not limited to
28 “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses,
benefits, or quantities that they do not have,” “[r]epresenting that goods or services are of a

1 particular standard, quality, or grade . . . if they are of another,” and “[a]dvertising goods or services
2 with intent not to sell them as advertised,” Ga. Code. Ann. § 10-1-393(b).

3 719. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
5 emissions testing that were different from production vehicles and/or (b) falsely attesting that
6 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
7 did not.

8 720. Plaintiffs and Georgia State Class members had no way of discerning that
9 Defendants’ representations were false and misleading because Plaintiffs and Georgia State Class
10 members did not have access to Defendants’ emissions certification test vehicles and Defendants’
11 emissions-related hardware was extremely sophisticated technology.

12 721. Defendants intentionally and knowingly misrepresented material facts regarding the
13 Class Vehicles with intent to mislead Plaintiffs and the Georgia State Class.

14 722. Defendants knew or should have known that their conduct violated the Georgia
15 FBPA.

16 723. Defendants owed Plaintiffs and the Georgia State Class a duty to disclose the
17 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

18 A. possessed exclusive knowledge that they were manufacturing, selling, and
19 distributing vehicles throughout the United States that did not perform as advertised;

20 B. intentionally concealed the foregoing from regulators, Plaintiffs, and
21 Georgia State Class members; and/or

22 C. made incomplete representations about the Class Vehicles’ fuel economy
23 and emissions while purposefully withholding material facts from Plaintiffs and Georgia
24 State Class members that contradicted these representations.

25 724. Defendants’ concealment of the true characteristics of the Class Vehicles’ fuel
26 consumption and emissions were material to Plaintiffs and the Georgia State Class.

27 725. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including Plaintiffs and the Georgia State Class,

1 about the true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
2 Defendants' brands, and the true value of the Class Vehicles.

3 726. Defendants' violations present a continuing risk to Plaintiffs and the Georgia State
4 Class, as well as to the general public. Defendants' unlawful acts and practices complained of
5 herein affect the public interest.

6 727. Plaintiffs and the Georgia State Class suffered ascertainable loss and actual
7 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
8 and failure to disclose material information. Defendants had an ongoing duty to all their customers
9 to refrain from unfair and deceptive practices under the Georgia FBPA. All owners of Class
10 Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and
11 practices made in the course of Defendants' business.

12 728. As a direct and proximate result of Defendants' violations of the Georgia FBPA,
13 Plaintiffs and the Georgia State Class has suffered injury-in-fact and/or actual damage.

14 729. Plaintiffs and the Georgia State Class are entitled to recover damages and exemplary
15 damages (for intentional violations) per Ga. Code. Ann. § 10-1-399(a).

16 730. Plaintiffs and the Georgia State Class also seek an order enjoining Defendants'
17 unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief
18 available under the Georgia FBPA per Ga. Code. Ann. § 10-1-399.

19 731. Pursuant to Ga. Code Ann. § 10-1-399, Plaintiffs sent notice letters to Defendants.
20 Additionally, all Defendants were provided notice of the issues raised in this count and this
21 Complaint by way of the investigations conducted by governmental regulators. Plaintiffs and the
22 Georgia State Class seek all damages and relief to which it is entitled.

23 **GEORGIA COUNT II:**
24 **Violations of Georgia's Uniform Deceptive Trade Practices Act**
25 **Ga. Code Ann. § 10-1-370 *et seq.***
26 **(On Behalf of the Georgia State Class)**

27 732. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.
28

1 733. Plaintiffs Erik Bloom, Ashish Chadha, Lee Marks, George Pearl, and Cecil
2 Robinson (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and
3 the Georgia State Class against all Defendants.

4 734. Defendants, Plaintiffs, and members of the Georgia State Class are “persons” within
5 the meaning of Georgia Uniform Deceptive Trade Practices Act (“Georgia UDTPA”), Ga. Code.
6 Ann. § 10-1-371(5).

7 735. The Georgia UDTPA prohibits “deceptive trade practices,” which include the
8 “misrepresentation of standard or quality of goods or services,” and “engaging in any other conduct
9 which similarly creates a likelihood of confusion or of misunderstanding.” Ga. Code. Ann.
10 § 10-1-372(a).

11 736. In the course of their business, Defendants concealed and suppressed material facts
12 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
13 emissions testing that were different from production vehicles and/or (b) falsely attesting that
14 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
15 did not.

16 737. Plaintiffs and Georgia State Class members had no way of discerning that
17 Defendants’ representations were false and misleading because Plaintiffs and Georgia State Class
18 members did not have access to Defendants’ emissions certification test vehicles and Defendants’
19 emissions-related hardware was extremely sophisticated technology.

20 738. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
21 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
22 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
23 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
24 transaction involving Class Vehicles has been supplied in accordance with a previous
25 representation when it has not.

26 739. Defendants intentionally and knowingly misrepresented material facts regarding the
27 Class Vehicles with intent to mislead Plaintiffs and the Georgia State Class.
28

1 740. Defendants knew or should have known that their conduct violated the Georgia
2 UDTPA.

3 741. Defendants owed Plaintiffs and the Georgia State Class a duty to disclose the
4 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

5 A. possessed exclusive knowledge that they were manufacturing, selling, and
6 distributing vehicles throughout the United States that did not perform as advertised;

7 B. intentionally concealed the foregoing from regulators, Plaintiffs, and
8 Georgia State Class members; and/or

9 C. made incomplete representations about the Class Vehicles' fuel economy
10 and emissions while purposefully withholding material facts that contradicted these
11 representations.

12 742. Defendants' concealment of the Class Vehicles' true fuel consumption and
13 emissions was material to Plaintiffs and the Georgia State Class.

14 743. Defendants' unfair or deceptive acts or practices were likely to and did in fact
15 deceive regulators and reasonable consumers, including Plaintiffs and the Georgia State Class,
16 about the true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
17 Defendants' brands, and the true value of the Class Vehicles.

18 744. Defendants' violations present a continuing risk to Plaintiffs and the Georgia State
19 Class, as well as to the general public. Defendants' unlawful acts and practices complained of
20 herein affect the public interest.

21 745. Plaintiffs and the Georgia State Class suffered ascertainable loss and actual
22 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
23 and failure to disclose material information. Defendants had an ongoing duty to all their customers
24 to refrain from unfair and deceptive practices under the Georgia UDTPA. All owners and lessees of
25 Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and
26 practices made in the course of Defendants' business.

27 746. As a direct and proximate result of Defendants' violations of the Georgia UDTPA,
28 Plaintiffs and the Georgia State Class have suffered injury-in-fact and/or actual damage.

1 747. Plaintiffs and the Georgia State Class seek an order enjoining Defendants’ unfair,
2 unlawful, and/or deceptive practices, attorneys’ fees, and any other just and proper relief available
3 under the Georgia UDTPA per Ga. Code. Ann § 10-1-373.

4 **GEORGIA COUNT III:**
5 **Breach of Express Warranty**
6 **Ga. Code Ann. §§ 11-2-313 and 11-2A-210**
7 **(On Behalf of the Georgia State Class)**

8 748. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
9 fully set forth herein.

10 749. Plaintiffs Erik Bloom, Ashish Chadha, Lee Marks, George Pearl, and Cecil
11 Robinson (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and
12 the Georgia State Class against all Defendants.

13 750. Defendants are and were at all relevant times “merchant[s]” with respect to motor
14 vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of motor vehicles
15 under § 11-2-103(1)(d).

16 751. With respect to leases, Defendants are and were at all relevant times “lessors” of
17 motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).

18 752. The Class Vehicles are and were at all relevant times “goods” within the meaning of
19 Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

20 753. In connection with the purchase or lease of each one of its new vehicles, Defendants
21 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
22 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

23 754. Defendants also made numerous representations, descriptions, and promises to
24 Plaintiffs and Georgia State Class members regarding the performance and emission controls of
25 their vehicles.

26 755. For example, Defendants included in the warranty booklets for some or all of the
27 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
28 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
from defects in material and workmanship which would cause it not to meet those standards.”

1 756. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 757. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 758. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 759. As manufacturers of light-duty vehicles, Defendants were required to provide these
22 warranties to purchasers or lessees of Class Vehicles.

23 760. Defendants’ warranties formed a basis of the bargain that was reached when
24 consumers purchased or leased Class Vehicles.

25 761. Despite the existence of warranties, Defendants failed to inform Plaintiffs and
26 Georgia State Class members that the Class Vehicles were defective and were intentionally
27 designed and manufactured to emit more pollution and achieve worse fuel economy on the road
28

1 than what was disclosed to regulators and represented to consumers who purchased or leased them,
2 and Defendants failed to fix the defective emission components free of charge.

3 762. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 763. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 764. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
10 insufficient to make Plaintiffs and Georgia State Class members whole and because Defendants
11 have failed and/or have refused to adequately provide the promised remedies within a reasonable
12 time.

13 765. Accordingly, recovery by Plaintiffs and Georgia State Class members is not
14 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
15 and workmanship, and they seek all remedies as allowed by law.

16 766. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
17 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
18 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
19 material facts regarding the Class Vehicles. Plaintiffs and Georgia State Class members were
20 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

21 767. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
22 through the limited remedy of repairing and correcting Defendants' defect in materials and
23 workmanship as many incidental and consequential damages have already been suffered because of
24 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
25 failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs'
26 and Georgia State Class members' remedies would be insufficient to make them whole.

27 768. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiffs and
28 Georgia State Class members assert, as additional and/or alternative remedies, the revocation of

1 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
2 currently owned or leased, and for such other incidental and consequential damages as allowed.

3 769. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 770. As a direct and proximate result of Defendants' breach of express warranties,
6 Plaintiffs and Georgia State Class members have been damaged in an amount to be determined at
7 trial.

8 **GEORGIA COUNT IV:**
9 **Breach of Implied Warranty of Merchantability**
10 **Ga. Code Ann. §§ 11-2-314 and 11-2A-212**
11 **(On Behalf of the Georgia State Class)**

12 771. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 772. Plaintiffs Erik Bloom, Ashish Chadha, Lee Marks, George Pearl, and Cecil
15 Robinson (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and
16 the Georgia State Class against all Defendants.

17 773. Defendants are and were at all relevant times "merchant[s]" with respect to motor
18 vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a "seller" of motor vehicles
19 under § 11-2-103(1)(d).

20 774. With respect to leases, Defendants are and were at all relevant times "lessors" of
21 motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).

22 775. The Class Vehicles are and were at all relevant times "goods" within the meaning of
23 Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).

24 776. A warranty that the Class Vehicles were in merchantable condition and fit for the
25 ordinary purpose for which vehicles are used is implied by law pursuant to Ga. Code Ann.
26 §§ 11-2-314 and 11-2A-212.

27 777. These Class Vehicles, when sold or leased and at all times thereafter, were
28 materially different from vehicles Defendants submitted for emissions testing and/or did not

1 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
2 fit for the ordinary purpose for which vehicles are used.

3 778. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 779. As a direct and proximate result of Defendants' breach of the implied warranty of
6 merchantability, Plaintiffs and Georgia State Class members have been damaged in an amount to
7 be proven at trial.

8 **HAWAII COUNT I:**
9 **Unfair and Deceptive Acts in Violation of Hawaii Law**
10 **Haw. Rev. Stat. § 480 *et seq.***
11 **(On Behalf of the Hawaii State Class)**

12 780. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 781. This count is brought on behalf of the Hawaii State Class against all Defendants.

15 782. Defendants are "person[s]" under Haw. Rev. Stat. § 480-1.

16 783. Hawaii State Class members are "consumer[s]" as defined by Haw. Rev. Stat.
17 § 480-1, who purchased or leased one or more Class Vehicles.

18 784. Defendants' acts or practices as set forth above occurred in the conduct of trade or
19 commerce.

20 785. The Hawaii Act § 480-2(a) prohibits "unfair methods of competition and unfair or
21 deceptive acts or practices in the conduct of any trade or commerce"

22 786. In the course of their business, Defendants concealed and suppressed material facts
23 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
24 emissions testing that were different from production vehicles and/or (b) falsely attesting that
25 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
26 did not.

27 787. Hawaii State Class members had no way of discerning that Defendants'
28 representations were false and misleading because Hawaii State Class members did not have access

1 to Defendants' emissions certification test vehicles and Defendants' emissions-related hardware
2 was extremely sophisticated technology.

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

9 789. Defendants intentionally and knowingly misrepresented material facts regarding the
10 Class Vehicles with intent to mislead the Hawaii State Class.

11 790. Defendants knew or should have known that their conduct violated Hawaii law.

12 791. Defendants owed the Hawaii State Class a duty to disclose the illegality and public
13 health risks, the true nature of the Class Vehicles, because Defendants:

14 A. possessed exclusive knowledge that they were manufacturing, selling, and
15 distributing vehicles throughout the United States that did not perform as advertised;

16 B. intentionally concealed the foregoing from regulators and Hawaii State
17 Class members; and/or

18 C. made incomplete representations about the Class Vehicles' fuel economy
19 and emissions while purposefully withholding material facts that contradicted these
20 representations.

21 792. Defendants' concealment of the Class Vehicles' true fuel consumption and
22 emissions was material to the Hawaii State Class.

23 793. Defendants' unfair or deceptive acts or practices were likely to and did in fact
24 deceive regulators and reasonable consumers, including the Hawaii State Class, about the true
25 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
26 brands, and the true value of the Class Vehicles.

1 803. For example, Defendants included in the warranty booklets for some or all of the
2 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
3 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
4 from defects in material and workmanship which would cause it not to meet those standards.”

5 804. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
6 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
7 Warranty.”

8 805. The EPA requires vehicle manufacturers to provide a Performance Warranty with
9 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
10 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
11 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
12 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
13 emission control components are covered for the first eight years or 80,000 miles (whichever
14 comes first). These major emission control components subject to the longer warranty include the
15 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
16 device or computer.

17 806. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
18 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
19 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
20 Design and Defect Warranty required by the EPA covers repair of emission control or emission
21 related parts, which fail to function or function improperly because of a defect in materials or
22 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
23 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
24 comes first.

25 807. As manufacturers of light-duty vehicles, Defendants were required to provide these
26 warranties to purchasers or lessees of Class Vehicles.

27 808. Defendants’ warranties formed a basis of the bargain that was reached when
28 consumers purchased or leased Class Vehicles.

1 809. Despite the existence of warranties, Defendants failed to inform Hawaii State Class
2 members that the Class Vehicles were defective and were intentionally designed and manufactured
3 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
4 regulators and represented to consumers who purchased or leased them, and Defendants failed to
5 fix the defective emission components free of charge.

6 810. Defendants breached the express warranty promising to repair and correct
7 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
8 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

9 811. Affording Defendants a reasonable opportunity to cure their breach of written
10 warranties would be unnecessary and futile here.

11 812. Furthermore, the limited warranty promising to repair and correct Defendants'
12 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
13 insufficient to make Hawaii State Class members whole and because Defendants have failed and/or
14 have refused to adequately provide the promised remedies within a reasonable time.

15 813. Accordingly, recovery by Hawaii State Class members is not restricted to the
16 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
17 and they seek all remedies as allowed by law.

18 814. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
19 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
20 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
21 material facts regarding the Class Vehicles. Hawaii State Class members were therefore induced to
22 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

23 815. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
24 through the limited remedy of repairing and correcting Defendants' defect in materials and
25 workmanship as many incidental and consequential damages have already been suffered because of
26 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
27 failure to provide such limited remedy within a reasonable time, and any limitation on Hawaii State
28 Class members' remedies would be insufficient to make them whole.

1 816. Finally, because of Defendants’ breach of warranty as set forth herein, Hawaii State
2 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the
3 goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or
4 leased, and for such other incidental and consequential damages as allowed.

5 817. Defendants were provided reasonable notice of these issues by way of a letter sent
6 by Plaintiffs as well as the regulators’ investigations.

7 818. As a direct and proximate result of Defendants’ breach of express warranties,
8 Hawaii State Class members have been damaged in an amount to be determined at trial.

9 **HAWAII COUNT III:**
10 **Breach of Implied Warranty of Merchantability**
11 **Haw. Rev. Stat. §§ 490:2-314 and 490:2A-212**
12 **(On Behalf of the Hawaii State Class)**

13 819. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 820. This count is brought on behalf of the Hawaii State Class against all Defendants.

16 821. Defendants are and were at all relevant times “merchant[s]” with respect to motor
17 vehicles under Haw. Rev. Stat. §§ 490:2-104(1) and 490:2A-103(b), and a “seller” of motor
18 vehicles under § 490:2-103(1)(d).

19 822. With respect to leases, Defendants are and were at all relevant times “lessors” of
20 motor vehicles under Haw. Rev. Stat. § 490:2A-103(a)(16).

21 823. The Class Vehicles are and were at all relevant times “goods” within the meaning of
22 Haw. Rev. Stat. §§ 490:2-105(1) and 490:2A-103(a)(8).

23 824. A warranty that the Class Vehicles were in merchantable condition and fit for the
24 ordinary purpose for which vehicles are used is implied by law pursuant to Haw. Rev. Stat.
25 §§ 490:2-314 and 490:2A-212.

26 825. These Class Vehicles, when sold or leased and at all times thereafter, were
27 materially different from vehicles Defendants submitted for emissions testing and/or did not
28 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
fit for the ordinary purpose for which vehicles are used.

1 826. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators' investigations.

3 827. As a direct and proximate result of Defendants' breach of the implied warranty of
4 merchantability, Hawaii State Class members have been damaged in an amount to be proven at
5 trial.

6 **IDAHO COUNT I:**
7 **Violations of the Idaho Consumer Protection Act**
8 **Idaho Code § 48-601 *et seq.***
9 **(On Behalf of the Idaho State Class)**

10 828. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

11 829. This count is brought on behalf of the Idaho State Class against all Defendants.

12 830. Defendants are "person[s]" under the Idaho Consumer Protection Act ("Idaho
13 CPA"), Idaho Code § 48-602(1).

14 831. Defendants' acts or practices as set forth above occurred in the conduct of "trade" or
15 "commerce" under Idaho Code § 48-602(2).

16 832. Defendants participated in misleading, false, or deceptive acts that violated the
17 Idaho CPA.

18 833. In the course of their business, Defendants concealed and suppressed material facts
19 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
20 emissions testing that were different from production vehicles and/or (b) falsely attesting that
21 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
22 did not.

23 834. Idaho State Class members had no way of discerning that Defendants'
24 representations were false and misleading because the Idaho State Class did not have access to
25 Defendants' emissions certification test vehicles and Defendants' emissions-related hardware was
26 extremely sophisticated technology.

27 835. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
28 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
Vehicles are of a particular standard, quality, and grade when they are not; advertising Class

1 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
2 transaction involving Class Vehicles has been supplied in accordance with a previous
3 representation when it has not.

4 836. Defendants intentionally and knowingly misrepresented material facts regarding the
5 Class Vehicles with intent to mislead the Idaho State Class.

6 837. Defendants knew or should have known that their conduct violated the Idaho CPA.

7 838. Defendants owed the Idaho State Class a duty to disclose the illegality and public
8 health risks, the true nature of the Class Vehicles, because Defendants:

9 A. possessed exclusive knowledge that they were manufacturing, selling, and
10 distributing vehicles throughout the United States that did not perform as advertised;

11 B. intentionally concealed the foregoing from regulators and Idaho State Class
12 members; and/or

13 C. made incomplete representations about the Class Vehicles' fuel economy
14 and emissions while purposefully withholding material facts that contradicted these
15 representations.

16 839. Defendants' concealment of the Class Vehicles' true fuel consumption and
17 emissions were material to the Idaho State Class.

18 840. Defendants' unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including the Idaho State Class, about the true
20 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
21 brands, and the true value of the Class Vehicles.

22 841. Defendants' violations present a continuing risk to the Idaho State Class as well as
23 to the general public. Defendants' unlawful acts and practices complained of herein affect the
24 public interest.

25 842. The Idaho State Class suffered ascertainable loss and actual damages as a direct and
26 proximate result of Defendants' misrepresentations and concealment of and failure to disclose
27 material information. Defendants had an ongoing duty to all their customers to refrain from unfair
28 and deceptive practices under the Idaho CPA. All owners of Class Vehicles suffered ascertainable

1 loss as a result of Defendants’ deceptive and unfair acts and practices made in the course of
2 Defendants’ business.

3 843. As a direct and proximate result of Defendants’ violations of the Idaho CPA, the
4 Idaho State Class has suffered injury-in-fact and/or actual damage.

5 844. Pursuant to Idaho Code § 48-608, the Idaho State Class seeks monetary relief
6 against Defendants measured as the greater of (a) actual damages in an amount to be determined at
7 trial and (b) statutory damages in the amount of \$1,000 for each Idaho State Class member.

8 845. The Idaho State Class also seeks an order enjoining Defendants’ unfair, unlawful,
9 and/or deceptive practices, attorneys’ fees, and any other just and proper relief available under the
10 Idaho CPA.

11 846. The Idaho State Class also seeks punitive damages against Defendants because
12 Defendants conduct evidences an extreme deviation from reasonable standards. Defendants
13 flagrantly and fraudulently misrepresented the reliability of the Class Vehicles, deceived Class
14 members, and concealed material facts that only they knew—all to avoid the expense and public
15 relations nightmare of correcting a flaw in the Class Vehicles. Defendants’ unlawful conduct
16 constitutes oppression and fraud warranting punitive damages.

17 **IDAHO COUNT II:**
18 **Breach of Express Warranty**
19 **Idaho Code §§ 28-2-313 and 28-12-210**
20 **(On Behalf of the Idaho State Class)**

21 847. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
22 fully set forth herein.

23 848. This count is brought on behalf of the Idaho State Class against all Defendants.

24 849. Defendants are and were at all relevant times “merchant[s]” with respect to motor
25 vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and “sellers” of motor vehicles under
26 § 28-2-103(1)(d).

27 850. With respect to leases, Defendants are and were at all relevant times “lessors” of
28 motor vehicles under Idaho Code § 28-12-103(1)(p).

1 851. The Class Vehicles are and were at all relevant times “goods” within the meaning of
2 Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).

3 852. In connection with the purchase or lease of each one of its new vehicles, Defendants
4 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
5 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

6 853. Defendants also made numerous representations, descriptions, and promises to
7 Idaho State Class members regarding the performance and emission controls of their vehicles.

8 854. For example, Defendants included in the warranty booklets for some or all of the
9 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
10 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
11 from defects in material and workmanship which would cause it not to meet those standards.”

12 855. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
13 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
14 Warranty.”

15 856. The EPA requires vehicle manufacturers to provide a Performance Warranty with
16 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
17 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
18 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
19 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
20 emission control components are covered for the first eight years or 80,000 miles (whichever
21 comes first). These major emission control components subject to the longer warranty include the
22 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
23 device or computer.

24 857. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
25 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
26 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
27 Design and Defect Warranty required by the EPA covers repair of emission control or emission
28 related parts, which fail to function or function improperly because of a defect in materials or

1 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
2 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
3 comes first.

4 858. As manufacturers of light-duty vehicles, Defendants were required to provide these
5 warranties to purchasers or lessees of Class Vehicles.

6 859. Defendants' warranties formed a basis of the bargain that was reached when
7 consumers purchased or leased Class Vehicles.

8 860. Despite the existence of warranties, Defendants failed to inform Idaho State Class
9 members that the Class Vehicles were defective and were intentionally designed and manufactured
10 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
11 regulators and represented to consumers who purchased or leased them, and Defendants failed to
12 fix the defective emission components free of charge.

13 861. Defendants breached the express warranty promising to repair and correct
14 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
15 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

16 862. Affording Defendants a reasonable opportunity to cure their breach of written
17 warranties would be unnecessary and futile here.

18 863. Furthermore, the limited warranty promising to repair and correct Defendants'
19 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
20 insufficient to make Idaho State Class members whole and because Defendants have failed and/or
21 have refused to adequately provide the promised remedies within a reasonable time.

22 864. Accordingly, recovery by Idaho State Class members is not restricted to the limited
23 warranty promising to repair and correct Defendants' defect in materials and workmanship, and
24 they seek all remedies as allowed by law.

25 865. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
26 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
27 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
28

1 material facts regarding the Class Vehicles. Idaho State Class members were therefore induced to
2 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

3 866. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
4 through the limited remedy of repairing and correcting Defendants' defect in materials and
5 workmanship as many incidental and consequential damages have already been suffered because of
6 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
7 failure to provide such limited remedy within a reasonable time, and any limitation on the Idaho
8 State Class members' remedies would be insufficient to make them whole.

9 867. Finally, because of Defendants' breach of warranty as set forth herein, Idaho State
10 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the
11 goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or
12 leased, and for such other incidental and consequential damages as allowed.

13 868. Defendants were provided reasonable notice of these issues by way of a letter sent
14 by Plaintiffs as well as the regulators' investigations.

15 869. As a direct and proximate result of Defendants' breach of express warranties, Idaho
16 State Class members have been damaged in an amount to be determined at trial.

17 **IDAHO COUNT III:**
18 **Breach of Implied Warranty of Merchantability**
19 **Idaho Code §§ 28-2-314 and 28-12-212**
20 **(On Behalf of the Idaho State Class)**

21 870. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 871. This count is brought on behalf of the Idaho State Class against all Defendants.

24 872. Defendants are and were at all relevant times "merchant[s]" with respect to motor
25 vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and "sellers" of motor vehicles under
26 § 28-2-103(1)(d).

27 873. With respect to leases, Defendants are and were at all relevant times "lessors" of
28 motor vehicles under Idaho Code § 28-12-103(1)(p).

1 874. The Class Vehicles are and were at all relevant times “goods” within the meaning of
2 Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).

3 875. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to Idaho Code §§ 28-2-314
5 and 28-12-212.

6 876. These Class Vehicles, when sold or leased and at all times thereafter, were
7 materially different from vehicles Defendants submitted for emissions testing and/or did not
8 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
9 fit for the ordinary purpose for which vehicles are used.

10 877. Defendants were provided reasonable notice of these issues by way of a letter sent
11 by Plaintiffs as well as the regulators’ investigations.

12 878. As a direct and proximate result of Defendants’ breach of the implied warranty of
13 merchantability, Idaho State Class members have been damaged in an amount to be proven at trial.

14 **ILLINOIS COUNT I:**
15 **Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act**
16 **815 ILCS 505/1, et seq. and 720 ILCS 295/1a**
(On Behalf of the Illinois State Class)

17 879. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

18 880. Plaintiffs John Aronson and David Perkins III (for the purposes of this count,
19 “Plaintiffs”) bring this claim on behalf of themselves and the Illinois State Class against all
20 Defendants.

21 881. Defendants are “person[s]” as that term is defined in 815 ILCS 505/1(c).

22 882. Members of the Illinois State Class are “consumers” as that term is defined in 815
23 ILCS 505/1(e).

24 883. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”) prohibits
25 “unfair or deceptive acts or practices, including but not limited to the use or employment
26 of any deception, fraud, false pretense, false promise, misrepresentation or the concealment,
27 suppression or omission of any material fact, with intent that others rely upon the concealment,
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1 suppression or omission of such material fact . . . in the conduct of trade or commerce . . . whether
2 any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

3 884. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
5 emissions testing that were different from production vehicles and/or (b) falsely attesting that
6 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
7 did not.

8 885. Plaintiffs and Illinois State Class members had no way of discerning that
9 Defendants’ representations were false and misleading because Plaintiffs and Illinois State Class
10 members did not have access to Defendants’ emissions certification test vehicles and Defendants’
11 emissions-related hardware was extremely sophisticated technology. Illinois State Class members
12 did not and could not unravel Defendants’ deception on their own.

13 886. Defendants thus violated the Illinois CFA by, at minimum: representing that Class
14 Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that
15 Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
16 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
17 transaction involving Class Vehicles has been supplied in accordance with a previous
18 representation when it has not.

19 887. Defendants intentionally and knowingly misrepresented material facts regarding the
20 Class Vehicles with intent to mislead the Illinois State Class.

21 888. Defendants knew or should have known that their conduct violated the Illinois CFA.

22 889. Defendants owed the Illinois State Class a duty to disclose the illegality and public
23 health risks, the true nature of the Class Vehicles, because Defendants:

24 A. possessed exclusive knowledge that they were manufacturing, selling, and
25 distributing vehicles throughout the United States that did not perform as advertised;

26 B. intentionally concealed the foregoing from regulators and Illinois State
27 Class members; and/or
28

1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 890. Defendants' concealment of the Class Vehicles' fuel consumption and emissions
5 was material to the Illinois State Class.

6 891. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the Illinois State Class, about the true
8 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
9 brands, and the true value of the Class Vehicles.

10 892. Defendants' violations present a continuing risk to Plaintiffs and the Illinois State
11 Class as well as to the general public. Defendants' unlawful acts and practices complained of herein
12 affect the public interest.

13 893. Plaintiffs and the Illinois State Class suffered ascertainable loss and actual damages
14 as a direct and proximate result of Defendants' misrepresentations and concealment of and failure
15 to disclose material information Defendants had an ongoing duty to all their customers to refrain
16 from unfair and deceptive practices under the Illinois CFA. All owners of Class Vehicles suffered
17 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
18 course of Defendants' business.

19 894. As a direct and proximate result of Defendants' violations of the Illinois CFA,
20 Plaintiffs and members of the Illinois State Class have suffered injury-in-fact and/or actual damage.

21 895. Pursuant to 815 ILCS 505/10a(a), the Illinois State Class seeks monetary relief
22 against Defendants in the amount of actual damages, as well as punitive damages because
23 Defendants acted with fraud and/or malice and/or was grossly negligent.

24 896. Plaintiffs and the Illinois State Class also seek an order enjoining Defendants' unfair
25 and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and
26 proper relief available under 815 ILCS § 505/1 *et seq.*

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**ILLINOIS COUNT II:
Breach of Express Warranty
810 Ill. Comp. Stat. §§ 5/2-313 and 5/2A-210
(On Behalf of the Illinois State Class)**

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4 897. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
5 fully set forth herein.

6 898. Plaintiffs John Aronson and David Perkins III (for the purposes of this count,
7 “Plaintiffs”) bring this claim on behalf of themselves and the Illinois State Class against all
8 Defendants.

9 899. Defendants are and were at all relevant times “merchant[s]” with respect to motor
10 vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and “sellers” of motor vehicles
11 under § 5/2-103(1)(d).

12 900. With respect to leases, Defendants are and were at all relevant times “lessors” of
13 motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

14 901. The Class Vehicles are and were at all relevant times “goods” within the meaning of
15 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

16 902. In connection with the purchase or lease of each one of its new vehicles, Defendants
17 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
18 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

19 903. Defendants also made numerous representations, descriptions, and promises to
20 Illinois State Class members regarding the performance and emission controls of their vehicles.

21 904. For example, Defendants included in the warranty booklets for some or all of the
22 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
23 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
24 from defects in material and workmanship which would cause it not to meet those standards.”

25 905. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
26 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
27 Warranty.”
28

1 906. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 907. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 908. As manufacturers of light-duty vehicles, Defendants were required to provide these
19 warranties to purchasers or lessees of Class Vehicles.

20 909. Defendants' warranties formed a basis of the bargain that was reached when
21 consumers purchased or leased Class Vehicles.

22 910. Despite the existence of warranties, Defendants failed to inform Plaintiffs and
23 Illinois State Class members that the Class Vehicles were defective and intentionally designed and
24 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
25 disclosed to regulators and represented to consumers who purchased or leased them, and
26 Defendants failed to fix the defective emission components free of charge.

1 911. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 912. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 913. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
8 insufficient to make Illinois State Class members whole and because Defendants have failed and/or
9 have refused to adequately provide the promised remedies within a reasonable time.

10 914. Accordingly, recovery by Plaintiffs and Illinois State Class members is not
11 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
12 and workmanship, and they seek all remedies as allowed by law.

13 915. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
14 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
15 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. Plaintiffs and Illinois State Class members were
17 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 916. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
19 through the limited remedy of repairing and correcting Defendants' defect in materials and
20 workmanship as many incidental and consequential damages have already been suffered because of
21 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
22 failure to provide such limited remedy within a reasonable time, and any limitation on the Illinois
23 State Class members' remedies would be insufficient to make them whole.

24 917. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiffs and
25 Illinois State Class members assert, as additional and/or alternative remedies, the revocation of
26 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
27 currently owned or leased, and for such other incidental and consequential damages as allowed.
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1 918. Defendants were provided notice of these issues by numerous complaints filed
2 against them, including the instant Complaint, within a reasonable amount of time.

3 919. As a direct and proximate result of Defendants' breach of express warranties,
4 Illinois State Class members have been damaged in an amount to be determined at trial.

5 **ILLINOIS COUNT III:**
6 **Breach of Implied Warranty of Merchantability**
7 **810 Ill. Comp. Stat. §§ 5/2-314 and 5/2A-212**
8 **(On Behalf of the Illinois State Class)**

9 920. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 921. Plaintiffs John Aronson and David Perkins III (for the purposes of this count,
12 "Plaintiffs") bring this claim on behalf of themselves and the Illinois State Class against all
13 Defendants.

14 922. Defendants are and were at all relevant times "merchant[s]" with respect to motor
15 vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and "sellers" of motor vehicles
16 under § 5/2-103(1)(d).

17 923. With respect to leases, Defendants are and were at all relevant times "lessors" of
18 motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

19 924. The Class Vehicles are and were at all relevant times "goods" within the meaning of
20 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

21 925. A warranty that the Class Vehicles were in merchantable condition and fit for the
22 ordinary purpose for which vehicles are used is implied by law pursuant to 810 Ill. Comp. Stat.
23 §§ 28-2-314 and 28-12-212.

24 926. These Class Vehicles, when sold or leased and at all times thereafter, were
25 materially different from vehicles Defendants submitted for emissions testing and/or did not
26 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
27 fit for the ordinary purpose for which vehicles are used.

28 927. Defendants were provided reasonable notice of these issues by way of a letter sent
by Plaintiffs as well as the regulators' investigations.

1 928. As a direct and proximate result of Defendants' breach of the implied warranty of
2 merchantability, Illinois State Class members have been damaged in an amount to be proven at
3 trial.

4 **INDIANA COUNT I:**
5 **Violations of the Indiana Deceptive Consumer Sales Act**
6 **Ind. Code § 24-5-0.5-3**
7 **(On Behalf of the Indiana State Class)**

8 929. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

9 930. This count is brought on behalf of the Indiana State Class against all Defendants.

10 931. In the course of their business, Defendants concealed and suppressed material facts
11 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
12 emissions testing that were different from production vehicles and/or (b) falsely attesting that
13 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
14 did not.

15 932. Indiana State Class members had no way of discerning that Defendants'
16 representations were false and misleading because Indiana State Class members did not have
17 access to Defendants' emissions certification test vehicles and Defendants' emissions-related
18 hardware was extremely sophisticated technology. Indiana State Class members did not and could
19 not unravel Defendants' deception on their own.

20 933. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
21 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
22 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
23 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
24 transaction involving Class Vehicles has been supplied in accordance with a previous
25 representation when it has not.

26 934. Defendants intentionally and knowingly misrepresented material facts regarding the
27 Class Vehicles with intent to mislead the Indiana State Class.

28 935. Defendants knew or should have known that their conduct violated the Indiana
DCSA.

1 936. Defendants owed the Indiana State Class a duty to disclose the illegality and public
2 health risks, the true nature of the Class Vehicles, because Defendants:

3 A. possessed exclusive knowledge that they were manufacturing, selling, and
4 distributing vehicles throughout the United States that did not perform as advertised;

5 B. intentionally concealed the foregoing from regulators and Indiana State
6 Class members; and/or

7 C. made incomplete representations about the Class Vehicles' fuel economy
8 and emissions while purposefully withholding material facts that contradicted these
9 representations.

10 937. Defendants' concealment of the Class Vehicles' true fuel consumption and
11 emissions was material to the Indiana State Class.

12 938. Defendants' unfair or deceptive acts or practices were likely to and did in fact
13 deceive regulators and reasonable consumers, including the Indiana State Class, about the true
14 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of Defendants'
15 brands, and the true value of the Class Vehicles.

16 939. Defendants' violations present a continuing risk to the Indiana State Class as well as
17 to the general public. Defendants' unlawful acts and practices complained of herein affect the
18 public interest.

19 940. The Indiana State Class suffered ascertainable loss and actual damages as a direct
20 and proximate result of Defendants' misrepresentations and concealment of and failure to disclose
21 material information. Defendants had an ongoing duty to all their customers to refrain from unfair
22 and deceptive practices under the Indiana DCSA. All owners of Class Vehicles suffered
23 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
24 course of Defendants' business.

25 941. As a direct and proximate result of Defendants' violations of the Indiana DCSA,
26 members of the Indiana State Class have suffered injury-in-fact and/or actual damage.

27 942. Pursuant to Ind. Code § 24-5-0.5-4, the Indiana State Class seeks monetary relief
28 against Defendants measured as the greater of (a) actual damages in an amount to be determined at

1 trial and (b) statutory damages in the amount of \$500 for each Indiana State Class member,
2 including treble damages up to \$1,000 for Defendants' willfully deceptive acts.

3 943. The Indiana State Class also seeks punitive damages based on the outrageousness
4 and recklessness of the Defendants' conduct and Defendants' high net worth.

5 944. Pursuant to Ind. Code § 24-5-0.5-5(a), Plaintiffs sent notice letters to Defendants.
6 Additionally, all Defendants were provided notice of the issues raised in this count and this
7 Complaint by way of the investigations conducted by governmental regulators. The Indiana State
8 Class seeks all damages and relief to which it is entitled.

9 **INDIANA COUNT II:**
10 **Breach of Express Warranty**
11 **Ind. Code §§ 26-1-3-313 and 26-1-2.1-210**
12 **(On Behalf of the Indiana State Class)**

13 945. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
14 fully set forth herein.

15 946. This count is brought on behalf of the Indiana State Class against all Defendants.

16 947. Defendants are and were at all relevant times "merchant[s]" with respect to motor
17 vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and "sellers" of motor vehicles
18 under § 26-1-2-103(1)(d).

19 948. With respect to leases, Defendants are and were at all relevant times "lessors" of
20 motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

21 949. The Class Vehicles are and were at all relevant times "goods" within the meaning of
22 Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).

23 950. In connection with the purchase or lease of each one of its new vehicles, Defendants
24 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
25 warranty exists to repair the vehicle "if it fails to function properly as designed during normal use."

26 951. Defendants also made numerous representations, descriptions, and promises to
27 Indiana State Class members regarding the performance and emission controls of their vehicles.

28 952. For example, Defendants included in the warranty booklets for some or all of the
Class Vehicles the warranty that its vehicles were "designed, built, and equipped to conform at the

1 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
2 from defects in material and workmanship which would cause it not to meet those standards.”

3 953. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 954. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
8 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles (whichever
12 comes first). These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 955. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
17 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
18 Design and Defect Warranty required by the EPA covers repair of emission control or emission
19 related parts, which fail to function or function improperly because of a defect in materials or
20 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
21 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
22 comes first.

23 956. As manufacturers of light-duty vehicles, Defendants were required to provide these
24 warranties to purchasers or lessees of Class Vehicles.

25 957. Defendants’ warranties formed a basis of the bargain that was reached when
26 consumers purchased or leased the Class Vehicles.

27 958. Despite the existence of warranties, Defendants failed to inform Indiana State Class
28 members that the Class Vehicles were defective and intentionally designed and manufactured to

1 emit more pollution and achieve worse fuel economy on the road than what was disclosed to
2 regulators and represented to consumers who purchased or leased them, and Defendants failed to
3 fix the defective emission components free of charge.

4 959. Defendants breached the express warranty promising to repair and correct
5 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
6 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

7 960. Affording Defendants a reasonable opportunity to cure their breach of written
8 warranties would be unnecessary and futile here.

9 961. Furthermore, the limited warranty promising to repair and correct Defendants'
10 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
11 insufficient to make Indiana State Class members whole and because Defendants have failed and/or
12 have refused to adequately provide the promised remedies within a reasonable time.

13 962. Accordingly, recovery by Indiana State Class members is not restricted to the
14 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
15 and they seek all remedies as allowed by law.

16 963. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
17 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
18 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
19 material facts regarding the Class Vehicles. Indiana State Class members were therefore induced to
20 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

21 964. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
22 through the limited remedy of repairing and correcting Defendants' defect in materials and
23 workmanship as many incidental and consequential damages have already been suffered because of
24 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
25 failure to provide such limited remedy within a reasonable time, and any limitation on the Indiana
26 State Class members' remedies would be insufficient to make them whole.

27 965. Finally, because of Defendants' breach of warranty as set forth herein, Indiana State
28 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the

1 goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or
2 leased, and for such other incidental and consequential damages as allowed.

3 966. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 967. As a direct and proximate result of Defendants' breach of express warranties,
6 Indiana State Class members have been damaged in an amount to be determined at trial.

7 **INDIANA COUNT III:**
8 **Breach of Implied Warranty of Merchantability**
9 **Ind. Code §§ 26-1-3-314 and 26-1-2.1-212**
10 **(On Behalf of the Indiana State Class)**

11 968. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 969. This count is brought on behalf of the Indiana State Class against all Defendants.

14 970. Defendants are and were at all relevant times "merchant[s]" with respect to motor
15 vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and "sellers" of motor vehicles
16 under § 26-1-2-103(1)(d).

17 971. With respect to leases, Defendants are and were at all relevant times "lessors" of
18 motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).

19 972. The Class Vehicles are and were at all relevant times "goods" within the meaning of
20 Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).

21 973. A warranty that the Class Vehicles were in merchantable condition and fit for the
22 ordinary purpose for which vehicles are used is implied by law pursuant to Ind. Code
23 §§ 26-1-2-314 and 26-1-2.1-212.

24 974. These Class Vehicles, when sold or leased and at all times thereafter, were
25 materially different from vehicles Defendants submitted for emissions testing and/or did not
26 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
27 fit for the ordinary purpose for which vehicles are used.

28 975. Defendants were provided reasonable notice of these issues by way of a letter sent
by Plaintiffs as well as the regulators' investigations.

1 976. As a direct and proximate result of Defendants’ breach of the implied warranty of
2 merchantability, Indiana State Class members have been damaged in an amount to be proven at
3 trial.

4 **IOWA COUNT I:**
5 **Violations of the Private Right of Action For Consumer Frauds Act**
6 **Iowa Code § 714h.1, et seq.**
7 **(On Behalf of the Iowa State Class)**

8 977. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

9 978. This count is brought on behalf of the Iowa State Class against all Defendants.

10 979. Defendants are “person[s]” under Iowa Code § 714H.2(7).

11 980. Iowa State Class members are “consumers,” as defined by Iowa Code § 14H.2(3),
12 who purchased or leased one or more Class Vehicles.

13 981. The Iowa Private Right of Action for Consumer Frauds Act (“Iowa CFA”) prohibits
14 any “practice or act the person knows or reasonably should know is an unfair practice, deception,
15 fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or
16 omission of a material fact, with the intent that others rely upon the unfair practice, deception,
17 fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in
18 connection with the advertisement, sale, or lease of consumer merchandise.” Iowa Code § 714H.3.

19 982. In the course of their business, Defendants concealed and suppressed material facts
20 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
21 emissions testing that were different from production vehicles and/or (b) falsely attesting that
22 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
23 did not.

24 983. Iowa State Class members had no way of discerning that Defendants’
25 representations were false and misleading because Iowa State Class members did not have access to
26 Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware was
27 extremely sophisticated technology.

28 984. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
have characteristics, uses, benefits, and qualities which they do not have; representing that Class

1 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
2 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
3 transaction involving Class Vehicles has been supplied in accordance with a previous
4 representation when it has not.

5 985. Defendants intentionally and knowingly misrepresented material facts regarding the
6 Class Vehicles with intent to mislead the Iowa State Class.

7 986. Defendants knew or should have known that their conduct violated the Iowa CFA.

8 987. Defendants owed the Iowa State Class a duty to disclose the illegality and public
9 health risks, the true nature of the Class Vehicles, because Defendants:

10 A. possessed exclusive knowledge that they were manufacturing, selling, and
11 distributing vehicles throughout the United States that did not perform as advertised;

12 B. intentionally concealed the foregoing from regulators and Iowa State Class
13 members; and/or

14 C. made incomplete representations about the Class Vehicles' fuel economy
15 and emissions while purposefully withholding material facts that contradicted these
16 representations.

17 988. Defendants' concealment of the Class Vehicles' true fuel consumption and
18 emissions was material to the Iowa State Class.

19 989. Defendants' unfair or deceptive acts or practices were likely to and did in fact
20 deceive regulators and reasonable consumers, including the Iowa State Class, about the true
21 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
22 brands, and the true value of the Class Vehicles.

23 990. Defendants' violations present a continuing risk to the Iowa State Class as well as to
24 the general public. Defendants' unlawful acts and practices complained of herein affect the public
25 interest.

26 991. The Iowa State Class suffered ascertainable loss and actual damages as a direct and
27 proximate result of Defendants' misrepresentations and concealment of and failure to disclose
28 material information. Defendants had an ongoing duty to all their customers to refrain from unfair

1 and deceptive practices under the Iowa CFA. All owners of Class Vehicles suffered ascertainable
2 loss as a result of Defendants’ deceptive and unfair acts and practices made in the course of
3 Defendants’ business.

4 992. As a direct and proximate result of Defendants’ violations of the Iowa CFA,
5 members of the Iowa State Class have suffered injury-in-fact and/or actual damage.

6 993. Pursuant to Iowa Code § 714H.5, the Iowa State Class seeks an order enjoining
7 Defendants’ unfair and/or deceptive acts or practices; actual damages; in addition to an award of
8 actual damages, statutory damages up to three times the amount of actual damages awarded as a
9 result of Defendants’ willful and wanton disregard for the rights of others; attorneys’ fees; and such
10 other equitable relief as the Court deems necessary to protect the public from further violations of
11 the Iowa CFA.

12 **IOWA COUNT II:**
13 **Breach of Express Warranty**
14 **Iowa Code §§ 554.2313 and 554.13210**
15 **(On Behalf of the Iowa State Class)**

16 994. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
17 fully set forth herein.

18 995. This count is brought on behalf of the Iowa State Class against all Defendants.

19 996. Defendants are and were at all relevant times “merchant[s]” with respect to motor
20 vehicles under Iowa Code §§ 554.2104(1) and 554.13103(3), and “sellers” of motor vehicles under
21 § 554.2103(1)(d).

22 997. With respect to leases, Defendants are and were at all relevant times “lessors” of
23 motor vehicles under Iowa Code § 554.13103(1)(p).

24 998. The Class Vehicles are and were at all relevant times “goods” within the meaning of
25 Iowa Code §§ 554.2105(1) and 554.13103(1)(h).

26 999. In connection with the purchase or lease of each one of its new vehicles, Defendants
27 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
28 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

1 1000. Defendants also made numerous representations, descriptions, and promises to Iowa
2 State Class members regarding the performance and emission controls of their vehicles.

3 1001. For example, Defendants included in the warranty booklets for some or all of the
4 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
5 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
6 from defects in material and workmanship which would cause it not to meet those standards.”

7
8 1002. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
9 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
10 Warranty.”

11 1003. The EPA requires vehicle manufacturers to provide a Performance Warranty with
12 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
13 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
14 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
15 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
16 emission control components are covered for the first eight years or 80,000 miles (whichever
17 comes first). These major emission control components subject to the longer warranty include the
18 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
19 device or computer.

20 1004. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
21 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
22 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
23 Design and Defect Warranty required by the EPA covers repair of emission control or emission
24 related parts, which fail to function or function improperly because of a defect in materials or
25 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
26 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
27 comes first.
28

1 1005. As manufacturers of light-duty vehicles, Defendants were required to provide these
2 warranties to purchasers or lessees of Class Vehicles.

3 1006. Defendants' warranties formed a basis of the bargain that was reached when
4 consumers purchased or leased Class Vehicles.

5 1007. Despite the existence of warranties, Defendants failed to inform Iowa State Class
6 members that the Class Vehicles were defective and intentionally designed and manufactured to
7 emit more pollution and achieve worse fuel economy on the road than what was disclosed to
8 regulators and represented to consumers who purchased or leased them, and Defendants failed to
9 fix the defective emission components free of charge.

10 1008. Defendants breached the express warranty promising to repair and correct
11 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
12 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

13 1009. Affording Defendants a reasonable opportunity to cure their breach of written
14 warranties would be unnecessary and futile here.

15 1010. Furthermore, the limited warranty promising to repair and correct Defendants'
16 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
17 insufficient to make Iowa State Class members whole and because Defendants have failed and/or
18 have refused to adequately provide the promised remedies within a reasonable time.

19 1011. Accordingly, recovery by Iowa State Class members is not restricted to the limited
20 warranty promising to repair and correct Defendants' defect in materials and workmanship, and
21 they seek all remedies as allowed by law.

22 1012. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
23 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
24 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
25 material facts regarding the Class Vehicles. Iowa State Class members were therefore induced to
26 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

27 1013. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
28 through the limited remedy of repairing and correcting Defendants' defect in materials and

1 workmanship as many incidental and consequential damages have already been suffered because of
2 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
3 failure to provide such limited remedy within a reasonable time, and any limitation on Iowa State
4 Class members' remedies would be insufficient to make them whole.

5 1014. Finally, because of Defendants' breach of warranty as set forth herein, Iowa State
6 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the
7 goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or
8 leased, and for such other incidental and consequential damages as allowed.

9 1015. Defendants were provided reasonable notice of these issues by way of a letter sent
10 by Plaintiffs as well as the regulators' investigations.

11 1016. As a direct and proximate result of Defendants' breach of express warranties, Iowa
12 State Class members have been damaged in an amount to be determined at trial.

13 **IOWA COUNT III:**
14 **Breach of Implied Warranty of Merchantability**
15 **Iowa Code §§ 554.2314 and 554.13212**
16 **(On Behalf of the Iowa State Class)**

17 1017. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 1018. This count is brought on behalf of the Iowa State Class against all Defendants.

20 1019. Defendants are and were at all relevant times "merchant[s]" with respect to motor
21 vehicles under Iowa Code §§ 554.2104(1) and 554.13103(3), and "sellers" of motor vehicles under
22 § 554.2103(1)(d).

23 1020. With respect to leases, Defendants are and were at all relevant times "lessors" of
24 motor vehicles under Iowa Code § 554.13103(1)(p).

25 1021. The Class Vehicles are and were at all relevant times "goods" within the meaning of
26 Iowa Code §§ 554.2105(1) and 554.13103(1)(h).

27 1022. A warranty that the Class Vehicles were in merchantable condition and fit for the
28 ordinary purpose for which vehicles are used is implied by law pursuant to Iowa Code §§ 554.2314
and 554.13212.

1 1023. These Class Vehicles, when sold or leased and at all times thereafter, were
2 materially different from vehicles Defendants submitted for emissions testing and/or did not
3 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
4 fit for the ordinary purpose for which vehicles are used.

5 1024. Defendants were provided reasonable notice of these issues by way of a letter sent
6 by Plaintiffs as well as the regulators' investigations.

7 1025. As a direct and proximate result of Defendants' breach of the implied warranty of
8 merchantability, Iowa State Class members have been damaged in an amount to be proven at trial.

9 **KANSAS COUNT I:**
10 **Violations of the Kansas Consumer Protection Act**
11 **Kan. Stat. Ann. § 50-623 *et seq.***
12 **(On Behalf of the Kansas State Class)**

13 1026. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

14 1027. This count is brought on behalf of the Kansas State Class against all Defendants.

15 1028. Each Defendant is a "supplier" under the Kansas Consumer Protection Act
16 ("Kansas CPA"), Kan. Stat. Ann. § 50-624(l).

17 1029. Kansas State Class members are "consumers," within the meaning of Kan. Stat.
18 Ann. § 50-624(b), who purchased or leased one or more Class Vehicles.

19 1030. The sale of the Class Vehicles to the Kansas State Class members was a "consumer
20 transaction" within the meaning of Kan. Stat. Ann. § 50-624(c).

21 1031. The Kansas CPA states "[n]o supplier shall engage in any deceptive act or practice
22 in connection with a consumer transaction," Kan. Stat. Ann. § 50-626(a), and that deceptive acts or
23 practices include: (1) knowingly making representations or with reason to know that "(A) Property
24 or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or
25 quantities that they do not have;" and "(D) property or services are of particular standard, quality,
26 grade, style or model, if they are of another which differs materially from the representation;" "(2)
27 the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or
28 ambiguity as to a material fact;" and "(3) the willful failure to state a material fact, or the willful
concealment, suppression or omission of a material fact." The Kansas CPA also provides that "[n]o

1 supplier shall engage in any unconscionable act or practice in connection with a consumer
2 transaction.” Kan. Stat. Ann. § 50-627(a).

3 1032. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
5 emissions testing that were different from production vehicles and/or (b) falsely attesting that
6 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
7 did not.

8 1033. Kansas State Class members had no way of discerning that Defendants’
9 representations were false and misleading because Kansas State Class members did not have access
10 to Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware
11 was extremely sophisticated technology.

12 1034. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
13 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
14 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
15 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
16 transaction involving Class Vehicles has been supplied in accordance with a previous
17 representation when it has not.

18 1035. Defendants intentionally and knowingly misrepresented material facts regarding the
19 Class Vehicles with intent to mislead the Kansas State Class.

20 1036. Defendants knew or should have known that their conduct violated the Kansas CPA.

21 1037. Defendants owed the Kansas State Class a duty to disclose the illegality and public
22 health risks, the true nature of the Class Vehicles, because Defendants:

23 A. possessed exclusive knowledge that they were manufacturing, selling, and
24 distributing vehicles throughout the United States that did not perform as advertised;

25 B. intentionally concealed the foregoing from regulators and Kansas State
26 Class members; and/or

1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 1038. Defendants' concealment of the Class Vehicles' true fuel consumption and
5 emissions was material to the Kansas State Class.

6 1039. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the Kansas State Class, about the true
8 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
9 brands, and the true value of the Class Vehicles.

10 1040. Defendants' violations present a continuing risk to the Kansas State Class as well as
11 to the general public. Defendants' unlawful acts and practices complained of herein affect the
12 public interest.

13 1041. Members of the Kansas State Class suffered ascertainable loss and actual damages
14 as a direct and proximate result of Defendants' misrepresentations and concealment of and failure
15 to disclose material information. Defendants had an ongoing duty to all their customers to refrain
16 from unfair and deceptive practices under the Kansas CPA. All owners of Class Vehicles suffered
17 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
18 course of Defendants' business.

19 1042. As a direct and proximate result of Defendants' violations of the Kansas CPA, the
20 Kansas State Class have suffered injury-in-fact and/or actual damage.

21 1043. Pursuant to Kan. Stat. Ann. § 50-634, the Kansas State Class seeks monetary relief
22 against Defendants measured as the greater of (a) actual damages in an amount to be determined at
23 trial and (b) statutory damages in the amount of \$10,000 for each Kansas State Class member.

24 1044. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or
25 deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available
26 under Kan. Stat. Ann § 50-623, *et seq.*

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**KANSAS COUNT II:
Breach of Express Warranty
Kan. Stat. §§ 84-2-313 and 84-2A-210
(On Behalf of the Kansas State Class)**

1045. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

1046. This count is brought on behalf of the Kansas State Class against all Defendants.

1047. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Kan. Stat. §§ 84-2-104(1) and 84-2A-103(3), and “sellers” of motor vehicles under § 84-2-103(1)(d).

1048. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Kan. Stat. § 84-2A-103(1)(p).

1049. The Class Vehicles are and were at all relevant times “goods” within the meaning of Kan. Stat. §§ 84-2-105(1) and 84-2A-103(1)(h).

1050. In connection with the purchase or lease of each one of its new vehicles, Defendants provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

1051. Defendants also made numerous representations, descriptions, and promises to Kansas State Class members regarding the performance and emission controls of their vehicles.

1052. For example, Defendants included in the warranty booklets for some or all of the Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free from defects in material and workmanship which would cause it not to meet those standards.”

1053. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two federal emission control warranties: a “Performance Warranty” and a “Design and Defect Warranty.”

1054. The EPA requires vehicle manufacturers to provide a Performance Warranty with respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty

1 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
2 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
3 emission control components are covered for the first eight years or 80,000 miles (whichever
4 comes first). These major emission control components subject to the longer warranty include the
5 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
6 device or computer.

7 1055. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
8 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
9 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
10 Design and Defect Warranty required by the EPA covers repair of emission control or emission
11 related parts, which fail to function or function improperly because of a defect in materials or
12 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
13 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
14 comes first.

15 1056. As manufacturers of light-duty vehicles, Defendants were required to provide these
16 warranties to purchasers or lessees of Class Vehicles.

17 1057. Defendants' warranties formed a basis of the bargain that was reached when
18 consumers purchased or leased Class Vehicles.

19 1058. Despite the existence of warranties, Defendants failed to inform Kansas State Class
20 members that the Class Vehicles were defective and intentionally designed and manufactured to
21 emit more pollution and achieve worse fuel economy on the road than what was disclosed to
22 regulators and represented to consumers who purchased or leased them, and Defendants failed to
23 fix the defective emission components free of charge.

24 1059. Defendants breached the express warranty promising to repair and correct
25 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
26 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

27 1060. Affording Defendants a reasonable opportunity to cure their breach of written
28 warranties would be unnecessary and futile here.

1 1061. Furthermore, the limited warranty promising to repair and correct Defendants’
2 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
3 insufficient to make Kansas State Class members whole and because Defendants have failed and/or
4 have refused to adequately provide the promised remedies within a reasonable time.

5 1062. Accordingly, recovery by Kansas State Class members is not restricted to the
6 limited warranty promising to repair and correct Defendants’ defect in materials and workmanship,
7 and they seek all remedies as allowed by law.

8 1063. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
9 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
10 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
11 material facts regarding the Class Vehicles. Kansas State Class members were therefore induced to
12 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

13 1064. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
14 through the limited remedy of repairing and correcting Defendants’ defect in materials and
15 workmanship as many incidental and consequential damages have already been suffered because of
16 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
17 failure to provide such limited remedy within a reasonable time, and any limitation on Kansas State
18 Class members’ remedies would be insufficient to make them whole.

19 1065. Finally, because of Defendants’ breach of warranty as set forth herein, Kansas State
20 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the
21 goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or
22 leased, and for such other incidental and consequential damages as allowed.

23 1066. Defendants were provided reasonable notice of these issues by way of a letter sent
24 by Plaintiffs as well as the regulators’ investigations.

25 1067. As a direct and proximate result of Defendants’ breach of express warranties,
26 Kansas State Class members have been damaged in an amount to be determined at trial.

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**KANSAS COUNT III:
Breach of Implied Warranty of Merchantability
Kan. Stat. §§ 84-2-314 and 84-2A-212
(On Behalf of the Kansas State Class)**

1068. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

1069. This count is brought on behalf of the Kansas State Class against all Defendants.

1070. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Kan. Stat. §§ 84-2-104(1) and 84-2A-103(3), and “sellers” of motor vehicles under § 84-2-103(1)(d).

1071. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Kan. Stat. § 84-2A-103(1)(p).

1072. The Class Vehicles are and were at all relevant times “goods” within the meaning of Kan. Stat. §§ 84-2-105(1) and 84-2A-103(1)(h).

1073. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Kan. Stat. §§ 84-2-314 and 84-2A-212.

1074. These Class Vehicles, when sold or leased and at all times thereafter, were materially different from vehicles Defendants submitted for emissions testing and/or did not comply with emissions regulations when being driven in Sport Plus mode, and were therefore not fit for the ordinary purpose for which vehicles are used.

1075. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs as well as the regulators’ investigations.

1076. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Kansas State Class members have been damaged in an amount to be proven at trial.

**KENTUCKY COUNT I:
Violations of the Kentucky Consumer Protection Act
Ky. Rev. Stat. Ann. § 367.110 *et seq.*
(On Behalf of the Kentucky State Class)**

1077. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1 1078. This count is brought on behalf of the Kentucky State Class against all Defendants.

2 1079. Defendants, Plaintiffs, and the Kentucky State Class are “persons” within the
3 meaning of the Ky. Rev. Stat. § 367.110(1).

4 1080. Defendants engaged in “trade” or “commerce” within the meaning of Ky. Rev. Stat.
5 § 367.110(2).

6 1081. The Kentucky Consumer Protection Act (“Kentucky CPA”) makes unlawful
7 “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce
8” Ky. Rev. Stat. § 367.170(1). Defendants participated in misleading, false, or deceptive acts
9 that violated the Kentucky CPA. By failing to disclose and by actively concealing the defects
10 identified herein, marketing their vehicles as reliable, efficient, and of high quality, and by
11 presenting themselves as reputable manufacturers that valued environmental cleanliness and fuel
12 efficiency, and stood behind their vehicles after they were sold, Defendants engaged in deceptive
13 business practices prohibited by the Kentucky CPA.

14 1082. In the course of their business, Defendants concealed and suppressed material facts
15 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
16 emissions testing that were different from production vehicles and/or (b) falsely attesting that
17 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
18 did not.

19 1083. Kentucky State Class members had no way of discerning that Defendants’
20 representations were false and misleading because the Kentucky State Class did not have access to
21 Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware was
22 extremely sophisticated technology.

23 1084. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
24 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
25 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
26 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
27 transaction involving Class Vehicles has been supplied in accordance with a previous
28 representation when it has not.

1 1085. Defendants intentionally and knowingly misrepresented material facts regarding the
2 Class Vehicles with intent to mislead the Kentucky State Class.

3 1086. Defendants knew or should have known that their conduct violated the Kentucky
4 CPA.

5 1087. Defendants owed the Kentucky State Class a duty to disclose the illegality and
6 public health risks, the true nature of the Class Vehicles, because Defendants:

7 A. possessed exclusive knowledge that they were manufacturing, selling, and
8 distributing vehicles throughout the United States that did not perform as advertised;

9 B. intentionally concealed the foregoing from regulators and Kentucky State
10 Class members; and/or

11 C. made incomplete representations about the Class Vehicles' fuel economy
12 and emissions, while purposefully withholding material facts that contradicted these
13 representations.

14 1088. Defendants' fraudulent concealment of the Class Vehicles' true fuel consumption
15 were material to the Kentucky State Class.

16 1089. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including the Kentucky State Class, about the true
18 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
19 brands, and the true value of the Class Vehicles.

20 1090. Defendants' violations present a continuing risk to the Kentucky State Class as well
21 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
22 public interest.

23 1091. Members of the Kentucky State Class suffered ascertainable loss and actual
24 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
25 and failure to disclose material information. Defendants had an ongoing duty to all their customers
26 to refrain from unfair and deceptive practices under the Kentucky CPA. All owners of Class
27 Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and
28 practices made in the course of Defendants' business.

1 1092. As a direct and proximate result of Defendants’ violations of the Kentucky CPA,
2 Kentucky State Class members have suffered injury-in-fact and/or actual damage.

3 1093. Pursuant to Ky. Rev. Stat. Ann. § 367.220, the Kentucky State Class seeks to
4 recover actual damages in an amount to be determined at trial; an order enjoining Defendants’
5 unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys’ fees; and any other just
6 and proper relief available under Ky. Rev. Stat. Ann. § 367.220.

7 **KENTUCKY COUNT II:**
8 **Breach of Express Warranty**
9 **Ky. Rev. Stat. §§ 335.2-313 and 355.2A-210**
10 **(On Behalf of the Kentucky State Class)**

11 1094. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
12 fully set forth herein.

13 1095. This count is brought on behalf of the Kentucky State Class against all Defendants.

14 1096. Defendants are and were at all relevant times “merchant[s]” with respect to motor
15 vehicles under Ky. Rev. Stat. §§ 355.2-104(1) and 355.2A-103(3), and “sellers” of motor vehicles
16 under § 355.2-103(1)(d).

17 1097. With respect to leases, Defendants are and were at all relevant times “lessors” of
18 motor vehicles under Ky. Rev. Stat. § 355.2A-103(1)(p).

19 1098. The Class Vehicles are and were at all relevant times “goods” within the meaning of
20 Ky. Rev. Stat. §§ 355.2-105(1) and 355.2A-103(1)(h).

21 1099. In connection with the purchase or lease of each one of its new vehicles, Defendants
22 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
23 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

24 1100. Defendants also made numerous representations, descriptions, and promises to
25 Kentucky State Class members regarding the performance and emission controls of their vehicles.

26 1101. For example, Defendants included in the warranty booklets for some or all of the
27 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
28 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
from defects in material and workmanship which would cause it not to meet those standards.”

1 1102. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 1103. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 1104. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 1105. As manufacturers of light-duty vehicles, Defendants were required to provide these
22 warranties to purchasers or lessees of Class Vehicles.

23 1106. Defendants’ warranties formed a basis of the bargain that was reached when
24 consumers purchased or leased Class Vehicles.

25 1107. Despite the existence of warranties, Defendants failed to inform Kentucky State
26 Class members that the Class Vehicles were defective and intentionally designed and manufactured
27 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
28

1 regulators and represented to consumers who purchased or leased them, and Defendants failed to
2 fix the defective emission components free of charge.

3 1108. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 1109. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 1110. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
10 insufficient to make Kentucky State Class members whole and because Defendants have failed
11 and/or have refused to adequately provide the promised remedies within a reasonable time.

12 1111. Accordingly, recovery by Kentucky State Class members is not restricted to the
13 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
14 and they seek all remedies as allowed by law.

15 1112. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
16 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
17 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
18 material facts regarding the Class Vehicles. Kentucky State Class members were therefore induced
19 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

20 1113. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
21 through the limited remedy of repairing and correcting Defendants' defect in materials and
22 workmanship as many incidental and consequential damages have already been suffered because of
23 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
24 failure to provide such limited remedy within a reasonable time, and any limitation on Kentucky
25 State Class members' remedies would be insufficient to make them whole.

26 1114. Finally, because of Defendants' breach of warranty as set forth herein, Kentucky
27 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
28

1 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
2 owned or leased, and for such other incidental and consequential damages as allowed.

3 1115. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 1116. As a direct and proximate result of Defendants' breach of express warranties,
6 Kentucky State Class members have been damaged in an amount to be determined at trial.

7 **KENTUCKY COUNT III:**
8 **Breach of Implied Warranty of Merchantability**
9 **Ky. Rev. Stat. §§ 335.2-314 and 355.2A-212**
10 **(On Behalf of the Kentucky State Class)**

11 1117. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1118. This count is brought on behalf of the Kentucky State Class against all Defendants.

14 1119. Defendants are and were at all relevant times "merchant[s]" with respect to motor
15 vehicles under Ky. Rev. Stat. §§ 355.2-104(1) and 355.2A-103(3), and "sellers" of motor vehicles
16 under § 355.2-103(1)(d).

17 1120. With respect to leases, Defendants are and were at all relevant times "lessors" of
18 motor vehicles under Ky. Rev. Stat. § 355.2A-103(1)(p).

19 1121. The Class Vehicles are and were at all relevant times "goods" within the meaning of
20 Ky. Rev. Stat. §§ 355.2-105(1) and 355.2A-103(1)(h).

21 1122. A warranty that the Class Vehicles were in merchantable condition and fit for the
22 ordinary purpose for which vehicles are used is implied by law pursuant to Ky. Rev. Stat.
23 §§ 335.2-314 and 355.2A-212.

24 1123. These Class Vehicles, when sold or leased and at all times thereafter, were
25 materially different from vehicles Defendants submitted for emissions testing and/or did not
26 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
27 fit for the ordinary purpose for which vehicles are used.

28 1124. Defendants were provided reasonable notice of these issues by way of a letter sent
by Plaintiffs as well as the regulators' investigations.

1 1125. As a direct and proximate result of Defendants’ breach of the implied warranty of
2 merchantability, Kentucky State Class members have been damaged in an amount to be proven at
3 trial.

4 **LOUISIANA COUNT I:**
5 **Violations of the Louisiana Unfair Trade Practices and Consumer Protection Law**
6 **La. Stat. Ann. § 51:1401 *et seq.***
7 **(On Behalf of the Louisiana State Class)**

8 1126. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

9 1127. Plaintiff Jeffery Henderson (for the purposes of this count, “Plaintiff”) brings this
10 claim on behalf of himself and the Louisiana State Class against all Defendants.

11 1128. Defendants, Plaintiff, and the Louisiana State Class are “persons” within the
12 meaning of the La. Rev. Stat. § 51:1402(8)

13 1129. Plaintiff and Louisiana State Class members are “consumers” within the meaning
14 of La. Rev. Stat. § 51:1402(1).

15 1130. Defendants engaged in “trade” or “commerce” within the meaning of La. Rev. Stat.
16 § 51:1402(10).

17 1131. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana
18 CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” La.
19 Rev. Stat. § 51:1405(A). Defendants participated in misleading, false, or deceptive acts that
20 violated the Louisiana CPL.

21 1132. In the course of their business, Defendants concealed and suppressed material facts
22 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
23 emissions testing that were different from production vehicles and/or (b) falsely attesting that
24 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
25 did not.

26 1133. Plaintiff and Louisiana State Class members had no way of discerning that
27 Defendants’ representations were false and misleading because the Louisiana State Class did not
28 have access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
hardware was extremely sophisticated technology.

1 1134. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
5 transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 1135. Defendants intentionally and knowingly misrepresented material facts regarding the
8 Class Vehicles with intent to mislead Plaintiff and the Louisiana State Class.

9 1136. Defendants knew or should have known that their conduct violated the Louisiana
10 CPL.

11 1137. Defendants owed the Louisiana State Class a duty to disclose the illegality and
12 public health risks, the true nature of the Class Vehicles, because Defendants:

13 A. possessed exclusive knowledge that they were manufacturing, selling, and
14 distributing vehicles throughout the United States that did not perform as advertised;

15 B. intentionally concealed the foregoing from regulators and Louisiana State
16 Class members; and/or

17 C. made incomplete representations about the Class Vehicles' fuel economy
18 and emissions while purposefully withholding material facts that contradicted these
19 representations.

20 1138. Defendants' concealment of the Class Vehicles' true fuel consumption and
21 emissions was material to the Louisiana State Class.

22 1139. Defendants' unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including the Louisiana State Class, about the true
24 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
25 brands, and the true value of the Class Vehicles.

26 1140. Defendants' violations present a continuing risk to the Louisiana State Class as well
27 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
28 public interest.

1 1141. The Louisiana State Class suffered ascertainable loss and actual damages as a direct
2 and proximate result of Defendants’ misrepresentations and concealment of and failure to disclose
3 material information. Defendants had an ongoing duty to all their customers to refrain from unfair
4 and deceptive practices under the Louisiana CPL. All owners of Class Vehicles suffered
5 ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made in the
6 course of Defendants’ business.

7 1142. As a direct and proximate result of Defendants’ violations of the Louisiana CPL, the
8 Louisiana State Class has suffered injury-in-fact and/or actual damage.

9 1143. Pursuant to La. Rev. Stat. § 51:1409, the Louisiana State Class seeks to recover
10 actual damages in an amount to be determined at trial; treble damages for Defendants’ knowing
11 violations of the Louisiana CPL; an order enjoining Defendants’ unfair, unlawful, and/or deceptive
12 practices; declaratory relief; attorneys’ fees; and any other just and proper relief available under La.
13 Rev. Stat. § 51:1409.

14 **LOUISIANA COUNT II:**
15 **Breach of Implied Warranty of Merchantability/Warranty Against Prohibitory Defects**
16 **La. Civ. Code Art. 2520, 2524**
17 **(On Behalf of the Louisiana State Class)**

18 1144. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
19 set forth herein.

20 1145. Plaintiff Jeffery Henderson (for the purposes of this count, “Plaintiff”) brings this
21 claim on behalf of himself and the Louisiana State Class against all Defendants.

22 1146. Defendants are and were at all relevant times merchants with respect to motor
23 vehicles.

24 1147. A warranty that the Class Vehicles were in merchantable condition is implied by
25 law in the instant transactions. These Class Vehicles, when sold or leased and at all times thereafter,
26 were materially different from vehicles Defendants submitted for emissions testing and/or did not
27 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
28 fit for the ordinary purpose for which vehicles are used.

1 1148. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators' investigations.

3 1149. As a direct and proximate result of Defendants' breach of the warranties of
4 merchantability, Plaintiff Louisiana State Class members have been damaged in an amount to be
5 proven at trial.

6 **MAINE COUNT I:**
7 **Violations of the Maine Unfair Trade Practices Act**
8 **Me. Rev. Stat. Ann. Tit. 5, § 205-A *et seq.***
9 **(On Behalf of the Maine State Class)**

10 1150. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

11 1151. This count is brought on behalf of the Maine State Class against all Defendants.

12 1152. Defendants, Plaintiffs, and the Maine State Class are "persons" within the meaning
13 of Me. Rev. Stat. Ann. Tit. 5, § 206(2).

14 1153. Defendants engaged in "trade" or "commerce" within the meaning of Me. Rev. Stat.
15 Ann. Tit. 5, § 206(3).

16 1154. The Maine Unfair Trade Practices Act ("Maine UTPA") makes unlawful "[u]nfair
17 methods of competition and unfair or deceptive acts or practices in the conduct of any trade or
18 commerce" Me. Rev. Stat. Ann. Tit. 5 § 207.

19 1155. In the course of their business, Defendants concealed and suppressed material facts
20 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
21 emissions testing that were different from production vehicles and/or (b) falsely attesting that
22 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
23 did not.

24 1156. Maine State Class members had no way of discerning that Defendants'
25 representations were false and misleading because the Maine State Class did not have access to
26 Defendants' emissions certification test vehicles and Defendants' emissions-related hardware was
27 extremely sophisticated technology.

28 1157. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
have characteristics, uses, benefits, and qualities which they do not have; representing that Class

1 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
2 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
3 transaction involving Class Vehicles has been supplied in accordance with a previous
4 representation when it has not.

5 1158. Defendants intentionally and knowingly misrepresented material facts regarding the
6 Class Vehicles with intent to mislead the Maine State Class.

7 1159. Defendants knew or should have known that their conduct violated the Maine
8 UTPA.

9 1160. Defendants owed the Maine State Class a duty to disclose the illegality and public
10 health risks, the true nature of the Class Vehicles, because Defendants:

11 A. possessed exclusive knowledge that they were manufacturing, selling, and
12 distributing vehicles throughout the United States that did not perform as advertised;

13 B. intentionally concealed the foregoing from regulators and Maine State Class
14 members; and/or

15 C. made incomplete representations about the Class Vehicles' fuel economy
16 and emissions while purposefully withholding material facts that contradicted these
17 representations.

18 1161. Defendants' concealment of the Class Vehicles' true fuel consumption and
19 emissions was material to the Maine State Class.

20 1162. Defendants' unfair or deceptive acts or practices were likely to and did in fact
21 deceive regulators and reasonable consumers, including the Maine State Class, about the true
22 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
23 brands, and the true value of the Class Vehicles.

24 1163. Defendants' violations present a continuing risk to the Maine State Class as well as
25 to the general public. Defendants' unlawful acts and practices complained of herein affect the
26 public interest.

27 1164. The Maine State Class suffered ascertainable loss and actual damages as a direct and
28 proximate result of Defendants' misrepresentations and concealment of and failure to disclose

1 material information. Defendants had an ongoing duty to all their customers to refrain from unfair
2 and deceptive practices under the Maine UTPA. All owners of Class Vehicles suffered
3 ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made in the
4 course of Defendants’ business.

5 1165. As a direct and proximate result of Defendants’ violations of the Maine UTPA, the
6 Maine State Class has suffered injury-in-fact and/or actual damage.

7 1166. Pursuant to Me. Rev. Stat. Ann. Tit. 5 § 213, the Maine State Class seeks an order
8 enjoining Defendants’ unfair and/or deceptive acts or practices, damages, punitive damages, and
9 attorneys’ fees, costs, and any other just and proper relief available under the Maine UTPA.

10 1167. Pursuant to Me. Rev. Stat. Ann. Title 5, § 50-634(g), Plaintiff sent notice letters to
11 Defendants. Additionally, all Defendants were provided notice of the issues raised in this count and
12 this Complaint by way of the investigations conducted by governmental regulators. The Maine
13 State Class seeks all damages and relief to which it is entitled.

14 **MAINE COUNT II:**
15 **Breach of Express Warranty**
16 **Me. Rev. Stat. Tit. 11 §§ 2-313 and 2-1210**
17 **(On Behalf of the Maine State Class)**

18 1168. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
19 fully set forth herein.

20 1169. This count is brought on behalf of the Maine State Class against all Defendants.

21 1170. Defendants are and were at all relevant times “merchant[s]” with respect to motor
22 vehicles under Me. Rev. Stat. Ann. Tit. 11, §§ 2-104(1), and 2-1103(3), and is a “seller” of motor
23 vehicles under § 2-103(1)(d).

24 1171. With respect to leases, Defendants are and were at all relevant times “lessors” of
25 motor vehicles under Me. Rev. Stat. Ann. Tit. 11, § 2-1103(1)(p).

26 1172. The Class Vehicles are and were at all relevant times “goods” within the meaning of
27 Me. Rev. Stat. Ann. Tit. 11, §§ 2-105(1), and 2-1103(1)(h).
28

1 1173. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

4 1174. Defendants also made numerous representations, descriptions, and promises to
5 Maine State Class members regarding the performance and emission controls of their vehicles.

6 1175. For example, Defendants included in the warranty booklets for some or all of the
7 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
8 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
9 from defects in material and workmanship which would cause it not to meet those standards.”

10 1176. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
11 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
12 Warranty.”

13 1177. The EPA requires vehicle manufacturers to provide a Performance Warranty with
14 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
15 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
16 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
17 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
18 emission control components are covered for the first eight years or 80,000 miles (whichever
19 comes first). These major emission control components subject to the longer warranty include the
20 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
21 device or computer.

22 1178. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
23 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
24 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
25 Design and Defect Warranty required by the EPA covers repair of emission control or emission
26 related parts, which fail to function or function improperly because of a defect in materials or
27 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
28

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1179. As manufacturers of light-duty vehicles, Defendants were required to provide these
4 warranties to purchasers or lessees of Class Vehicles.

5 1180. Defendants' warranties formed a basis of the bargain that was reached when
6 consumers purchased or leased Class Vehicles.

7 1181. Despite the existence of warranties, Defendants failed to inform Maine State Class
8 members that the Class Vehicles were defective and intentionally designed and manufactured to
9 emit more pollution and achieve worse fuel economy on the road than what was disclosed to
10 regulators and represented to consumers who purchased or leased them, and Defendants failed to
11 fix the defective emission components free of charge.

12 1182. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1183. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1184. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
19 insufficient to make Maine State Class members whole and because Defendants have failed and/or
20 have refused to adequately provide the promised remedies within a reasonable time.

21 1185. Accordingly, recovery by Maine State Class members is not restricted to the limited
22 warranty promising to repair and correct Defendants' defect in materials and workmanship, and
23 they seek all remedies as allowed by law.

24 1186. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
25 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
26 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Maine State Class members were therefore induced to
28 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 1187. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
2 through the limited remedy of repairing and correcting Defendants’ defect in materials and
3 workmanship as many incidental and consequential damages have already been suffered because of
4 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
5 failure to provide such limited remedy within a reasonable time, and any limitation on Maine State
6 Class members’ remedies would be insufficient to make them whole.

7 1188. Finally, because of Defendants’ breach of warranty as set forth herein, Maine State
8 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the
9 goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or
10 leased, and for such other incidental and consequential damages as allowed.

11 1189. Defendants were provided reasonable notice of these issues by way of a letter sent
12 by Plaintiffs as well as the regulators’ investigations.

13 1190. As a direct and proximate result of Defendants’ breach of express warranties, Maine
14 State Class members have been damaged in an amount to be determined at trial.

15 **MAINE COUNT III:**
16 **Breach of Implied Warranty of Merchantability**
17 **Me. Rev. Stat. Tit. 11 §§ 2-314 and 2-1212**
18 **(On Behalf of the Maine State Class)**

19 1191. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1192. This count is brought on behalf of the Maine State Class against all Defendants.

22 1193. Defendants are and were at all relevant times “merchant[s]” with respect to motor
23 vehicles under Me. Rev. Stat. Ann. Tit. 11, §§ 2-104(1), and 2-1103(3), and is a “seller” of motor
24 vehicles under § 2-103(1)(d).

25 1194. With respect to leases, Defendants are and were at all relevant times “lessors” of
26 motor vehicles under Me. Rev. Stat. Ann. Tit. 11, § 2-1103(1)(p).

27 1195. The Class Vehicles are and were at all relevant times “goods” within the meaning of
28 Me. Rev. Stat. Ann. Tit. 11, §§ 2-105(1), and 2-1103(1)(h).

1 1196. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Me. Rev. Stat. Ann. Tit.
3 11, §§ 2-314, and 2-1212.

4 1197. These Class Vehicles, when sold or leased and at all times thereafter, were
5 materially different from vehicles Defendants submitted for emissions testing and/or did not
6 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
7 fit for the ordinary purpose for which vehicles are used.

8 1198. Defendants were provided reasonable notice of these issues by way of a letter sent
9 by Plaintiffs as well as the regulators' investigations.

10 1199. As a direct and proximate result of Defendants' breach of the implied warranty of
11 merchantability, Maine State Class members have been damaged in an amount to be proven at trial.

12 **MARYLAND COUNT I:**
13 **Violations of the Maryland Consumer Protection Act**
14 **Md. Code Com. Law § 13-101 *et seq.***
15 **(On Behalf of the Maryland State Class)**

16 1200. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

17 1201. Plaintiff Jino Masone (for the purposes of this count, "Plaintiff") brings this claim
18 on behalf of himself and the Maryland State Class against all Defendants.

19 1202. Defendants and the Maryland State Class are "persons" within the meaning of Md.
20 Code Com. Law § 13-101(h).

21 1203. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person
22 may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md.
23 Code Com. Law § 13-303. Defendants participated in misleading, false, or deceptive acts that
24 violated the Maryland CPA.

25 1204. In the course of their business, Defendants concealed and suppressed material facts
26 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
27 emissions testing that were different from production vehicles and/or (b) falsely attesting that
28 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
did not.

1 1205. Maryland State Class members had no way of discerning that Defendants’
2 representations were false and misleading because the Maryland State Class Members did not have
3 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
4 hardware was extremely sophisticated technology. Maryland State Class members did not and
5 could not unravel Defendants’ deception on their own.

6 1206. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
7 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
8 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
9 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
10 transaction involving Class Vehicles has been supplied in accordance with a previous
11 representation when it has not.

12 1207. Defendants intentionally and knowingly misrepresented material facts regarding the
13 Class Vehicles with intent to mislead the Maryland State Class.

14 1208. Defendants knew or should have known that their conduct violated the Maryland
15 CPA.

16 1209. Defendants owed the Maryland State Class a duty to disclose the illegality and
17 public health risks, the true nature of the Class Vehicles, because Defendants:

18 A. possessed exclusive knowledge that they were manufacturing, selling, and
19 distributing vehicles throughout the United States that did not perform as advertised;

20 B. intentionally concealed the foregoing from regulators and Maryland State
21 Class members; and/or

22 C. made incomplete representations about the Class Vehicles’ fuel economy
23 and emissions while purposefully withholding material facts that contradicted these
24 representations.

25 1210. Defendants’ concealment of the Class Vehicles’ true fuel consumption and
26 emissions was material to the Maryland State Class.

27 1211. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
28 deceive regulators and reasonable consumers, including the Maryland State Class, about the true

1 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants’
2 brands, and the true value of the Class Vehicles.

3 1212. Defendants’ violations present a continuing risk to the Maryland State Class as well
4 as to the general public. Defendants’ unlawful acts and practices complained of herein affect the
5 public interest.

6 1213. The Maryland State Class suffered ascertainable loss and actual damages as a direct
7 and proximate result of Defendants’ misrepresentations and concealment of and failure to disclose
8 material information. Defendants had an ongoing duty to all their customers to refrain from unfair
9 and deceptive practices under the Maryland CPA. All owners and lessees of Class Vehicles
10 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
11 in the course of Defendants’ business.

12 1214. As a direct and proximate result of Defendants’ violations of the Maryland CPA, the
13 Maryland State Class has suffered injury-in-fact and/or actual damage.

14 1215. Pursuant to Md. Code Com. Law § 13-408, the Maryland State Class seeks actual
15 damages, attorneys’ fees, and any other just and proper relief available under the Maryland CPA.

16 **MARYLAND COUNT II:**
17 **Maryland Lemon Law**
18 **Md. Code Com. Law § 14-1501 *et seq.***
19 **(On Behalf of the Maryland State Class)**

20 1216. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
21 set forth.

22 1217. Plaintiff Jino Masone (for the purposes of this count, “Plaintiff”) brings this claim
23 on behalf of himself and the Maryland State Class against all Defendants.

24 1218. Plaintiff and the Maryland State Class own or lease “motor vehicles” within the
25 meaning of Md. Code, Com. Law § 14-1501(f), because these vehicles were registered in the state
26 and fall within the categories of vehicles manufactured, assembled, or distributed by Defendants.
27 These vehicles are not auto homes.

28 1219. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of Md.
Code, Com. Law § 14-1501(d).

1 1220. The Maryland State Class members are “consumers” within the meaning of Md.
2 Code Com. Law § 14-1501(b) because they: purchased the Class Vehicles, were transferred the
3 Class Vehicles during the warranty period, or are otherwise entitled to the attendant terms of
4 warranty.

5 1221. The Class Vehicles did not conform to their “warranties” under Md. Code Com.
6 Law § 14-1501(g) during the warranty period because they had inflated and misleading fuel
7 economy and emissions values, and were therefore not fit for the ordinary purpose for which
8 vehicles are used.

9 1222. Defendants had actual knowledge of the conformities during the “warranty period”
10 within the meaning of Md. Code, Com. Law § 14-1501(e). But the nonconformities continued to
11 exist throughout this term, as they have not been fixed. Plaintiff and Maryland State Class members
12 are excused from notifying Defendants of the nonconformities because it was already fully aware
13 of the problem—it intentionally created it—and any repair attempt is futile.

14 1223. Defendants have had a reasonable opportunity to cure the nonconformities during
15 the warranty period because of its actual knowledge of, creation of, and attempt to conceal the
16 nonconformities, but has not done so as required under Md. Code, Com. Law § 14-1502.

17 1224. Plaintiff and the Maryland State Class demands a full refund of the purchase price,
18 including all license fees, registration fees, and any similar governmental charges. Md. Code Com.
19 Law § 14-1502(c). Once payment has been tendered, Maryland State Class members will return
20 their vehicles.

21 **MARYLAND COUNT III:**
22 **Breach of Express Warranty**
23 **Md. Code Com. Law §§ 2-313 and 2a-210**
24 **(On Behalf of the Maryland State Class)**

25 1225. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
26 fully set forth herein.

27 1226. Plaintiff Jino Masone (for the purposes of this count, “Plaintiff”) brings this claim
28 on behalf of himself and the Maryland State Class against all Defendants.

1 1227. Defendants are and were at all relevant times “merchant[s]” with respect to motor
2 vehicles under Md. Code Com. Law § 2-104(1) and “sellers” of motor vehicles under
3 § 2-103(1)(d).

4 1228. With respect to leases, Defendants are and were at all relevant times “lessors” of
5 motor vehicles under Md. Code Com. Law § 2A-103(1)(p).

6 1229. The Class Vehicles are and were at all relevant times “goods” within the meaning of
7 Md. Code Com. Law §§ 2-105(1) and 2a-103(1)(h).

8 1230. In connection with the purchase or lease of each one of its new vehicles, Defendants
9 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
10 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

11 1231. Defendants also made numerous representations, descriptions, and promises to
12 Maryland State Class members regarding the performance and emission controls of their vehicles.

13 1232. For example, Defendants included in the warranty booklets for some or all of the
14 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
15 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
16 from defects in material and workmanship which would cause it not to meet those standards.”

17 1233. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
18 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
19 Warranty.”

20 1234. The EPA requires vehicle manufacturers to provide a Performance Warranty with
21 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
22 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
23 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
24 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
25 emission control components are covered for the first eight years or 80,000 miles (whichever
26 comes first). These major emission control components subject to the longer warranty include the
27 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
28 device or computer.

1 1235. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 1236. As manufacturers of light-duty vehicles, Defendants were required to provide these
10 warranties to purchasers or lessees of Class Vehicles.

11 1237. Defendants' warranties formed a basis of the bargain that was reached when
12 consumers purchased or leased Class Vehicles.

13 1238. Despite the existence of warranties, Defendants failed to inform Maryland State
14 Plaintiff and Class members that the Class Vehicles were defective and intentionally designed and
15 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
16 disclosed to regulators and represented to consumers who purchased or leased them, and
17 Defendants failed to fix the defective emission components free of charge.

18 1239. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 1240. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 1241. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
25 insufficient to make Plaintiff and Maryland State Class members whole and because Defendants
26 have failed and/or have refused to adequately provide the promised remedies within a reasonable
27 time.

1 1242. Accordingly, recovery by Plaintiff and Maryland State Class members is not
2 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
3 and workmanship, and they seek all remedies as allowed by law.

4 1243. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
5 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
6 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Plaintiff and Maryland State Class members were
8 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 1244. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
10 through the limited remedy of repairing and correcting Defendants' defect in materials and
11 workmanship as many incidental and consequential damages have already been suffered because of
12 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
13 failure to provide such limited remedy within a reasonable time, and any limitation on Maryland
14 State Class members' remedies would be insufficient to make them whole.

15 1245. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiff and
16 Maryland State Class members assert, as additional and/or alternative remedies, the revocation of
17 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 1246. Defendants were provided reasonable notice of these issues by way of a letter sent
20 by Plaintiffs as well as the regulators' investigations.

21 1247. As a direct and proximate result of Defendants' breach of express warranties,
22 Maryland State Class members have been damaged in an amount to be determined at trial.

23 **MARYLAND COUNT IV:**
24 **Breach of Implied Warranty of Merchantability**
25 **Md. Code Com. Law §§ 2-314 and 2a-212**
26 **(On Behalf of the Maryland State Class)**

27 1248. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 1249. Plaintiff Jino Masone (for the purposes of this count, “Plaintiff”) brings this claim
2 on behalf of himself and the Maryland State Class against all Defendants.

3 1250. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under Md. Code Com. Law § 2-104(1) and “sellers” of motor vehicles under
5 § 2-103(1)(d).

6 1251. With respect to leases, Defendants are and were at all relevant times “lessors” of
7 motor vehicles under Md. Code Com. Law § 2A-103(1)(p).

8 1252. The Class Vehicles are and were at all relevant times “goods” within the meaning of
9 Md. Code Com. Law §§ 2-105(1) and 2a-103(1)(h).

10 1253. A warranty that the Class Vehicles were in merchantable condition and fit for the
11 ordinary purpose for which vehicles are used is implied by law pursuant to Md. Code Com. Law
12 §§ 2-314, and 2a-212.

13 1254. These Class Vehicles, when sold or leased and at all times thereafter, were
14 materially different from vehicles Defendants submitted for emissions testing and/or did not
15 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
16 fit for the ordinary purpose for which vehicles are used.

17 1255. Defendants were provided reasonable notice of these issues by way of a letter sent
18 by Plaintiffs as well as the regulators’ investigations.

19 1256. As a direct and proximate result of Defendants’ breach of the implied warranty of
20 merchantability, Maryland State Class members have been damaged in an amount to be proven at
21 trial.

22 **MASSACHUSETTS COUNT I:**
23 **Deceptive Acts or Practices Prohibited by Massachusetts Law**
24 **Mass. Gen. Laws Ch. 93a, § 1, *et seq.***
(On Behalf of the Massachusetts State Class)

25 1257. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

26 1258. This count is brought on behalf of the Massachusetts State Class against all
27 Defendants.
28

1 1259. Defendants, Plaintiffs, and the Massachusetts State Class are “persons” within the
2 meaning of Mass. Gen. Laws ch. 93A, § 1(a).

3 1260. Defendants engaged in “trade” or “commerce” within the meaning of Mass. Gen.
4 Laws ch. 93A, § 1(b).

5 1261. Massachusetts law (the “Massachusetts Act”) prohibits “unfair or deceptive acts or
6 practices in the conduct of any trade or commerce.” Mass. Gen. Laws ch. 93A, § 2. Defendants
7 participated in misleading, false, or deceptive acts that violated the Massachusetts Act.

8 1262. In the course of their business, Defendants concealed and suppressed material facts
9 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
10 emissions testing that were different from production vehicles and/or (b) falsely attesting that
11 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
12 did not.

13 1263. Massachusetts State Class members had no way of discerning that Defendants’
14 representations were false and misleading because Massachusetts State Class members did not
15 have access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
16 hardware was extremely sophisticated technology.

17 1264. Massachusetts State Class members did not and could not unravel Defendants’
18 deception on their own.

19 1265. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
20 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
21 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
22 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
23 transaction involving Class Vehicles has been supplied in accordance with a previous
24 representation when it has not.

25 1266. Defendants intentionally and knowingly misrepresented material facts regarding the
26 Class Vehicles with intent to mislead the Massachusetts State Class.

27 1267. Defendants knew or should have known that their conduct violated the
28 Massachusetts Act.

1 1268. Defendants owed the Massachusetts State Class a duty to disclose the illegality and
2 public health risks, the true nature of the Class Vehicles, because Defendants:

3 A. possessed exclusive knowledge that they were manufacturing, selling, and
4 distributing vehicles throughout the United States that did not perform as advertised;

5 B. intentionally concealed the foregoing from regulators and Massachusetts
6 State Class members; and/or

7 C. made incomplete representations about the Class Vehicles' fuel economy
8 and emissions while purposefully withholding material facts that contradicted these
9 representations.

10 1269. Defendants' concealment of the Class Vehicles' true fuel consumption and
11 emissions was material to the Massachusetts State Class.

12 1270. Defendants' unfair or deceptive acts or practices were likely to and did in fact
13 deceive regulators and reasonable consumers, including the Massachusetts State Class, about the
14 true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
15 Defendants' brands, and the true value of the Class Vehicles.

16 1271. Defendants' violations present a continuing risk to the Massachusetts State Class as
17 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
18 the public interest.

19 1272. The Massachusetts State Class suffered ascertainable loss and actual damages as a
20 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
21 disclose material information. Defendants had an ongoing duty to all their customers to refrain
22 from unfair and deceptive practices under the Massachusetts Act. All owners and lessees of Class
23 Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and
24 practices made in the course of Defendants' business.

25 1273. As a direct and proximate result of Defendants' violations of the Massachusetts Act,
26 the Massachusetts State Class have suffered injury-in-fact and/or actual damage.

27 1274. Pursuant to Mass. Gen. Laws ch. 93A, § 9, the Massachusetts State Class seeks
28 monetary relief against Defendants measured as the greater of (a) actual damages in an amount to

1 be determined at trial and (b) statutory damages in the amount of \$25 for each Massachusetts State
2 Class member. Because Defendants’ conduct was committed willfully and knowingly, each
3 Massachusetts State Class member is entitled to recover up to three times actual damages, but no
4 less than two times actual damages.

5 1275. The Massachusetts State Class also seeks an order enjoining Defendants’ unfair
6 and/or deceptive acts or practices, punitive damages, and attorneys’ fees, costs, and any other just
7 and proper relief available under the Massachusetts Act.

8 1276. Pursuant to Mass. Gen. Laws ch. 93A, § 9(3), Plaintiffs sent notice letters to
9 Defendants. Additionally, all Defendants were provided notice of the issues raised in this count and
10 this Complaint by way of the investigations conducted by governmental regulators. The
11 Massachusetts State Class seeks all damages and relief to which it is entitled.

12 1277. As a result of Defendants’ conduct, the amount of its unjust enrichment should be
13 disgorged, in an amount according to proof.

14 **MASSACHUSETTS COUNT II:**
15 **Massachusetts Lemon Law**
16 **Mass. Gen. Laws Ch. 90, § 7N1/2(1)**
17 **(On Behalf of the Massachusetts State Class)**

18 1278. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
19 fully set forth herein.

20 1279. This count is brought on behalf of the Massachusetts State Class against all
21 Defendants.

22 1280. Massachusetts State Class members own or lease “motor vehicles” within the
23 meaning of Mass. Gen. Laws Ch. 90, § 7N1/2(1), because these vehicles were constructed or
24 designed for propulsion by power and were sold, leased, or replaced by Defendants. These vehicles
25 are not: (1) auto homes, (2) vehicles built primarily for off-road use, and (3) used primarily for
26 business purposes.

27 1281. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
28 Mass. Gen. Laws Ch. 90, § 7N1/2(1).

1 1282. The Massachusetts State Class members are “consumers” within the meaning of
2 Mass. Gen. Laws Ch. 90, § 7N1/2(1) because they bought or leased the Class Vehicles or are
3 otherwise entitled to the attendant terms of warranty.

4 1283. The Class Vehicles did not conform to their express and implied warranties because
5 they included inflated and misleading fuel economy values and misleading emissions values and
6 were therefore not fit for the ordinary purpose for which vehicles are used.

7 1284. Defendants had actual knowledge of the conformities during the “term of
8 protection” within the meaning of Mass. Gen. Laws Ch. 90, §§ 7N1/2(1)–7N1/2(2). But the
9 nonconformities continued to exist throughout this term, as they have not been fixed.
10 Massachusetts State Class members are excused from notifying Defendants of the nonconformities
11 because it was already fully aware of the problem—it intentionally created it—and any repair
12 attempt is futile.

13 1285. Defendants have had a reasonable opportunity to cure the nonconformities because
14 of its actual knowledge of, creation of, and attempt to conceal the nonconformities, but has not done
15 so as required under Mass. Gen. Laws Ch. 90, § 7N1/2(3).

16 1286. For vehicles purchased, the Massachusetts State Class demands a full refund of the
17 contract price. For vehicles leased, the Massachusetts State Class demands a full refund of all
18 payments made under the lease agreement. The Massachusetts State Class exercise their
19 “unqualified right” to reject an offer of replacement and will retain their vehicles until payment is
20 tendered under Mass. Gen. Laws Ch. 90, § 7N1/2(3).

21 **MASSACHUSETTS COUNT III:**
22 **Breach of Express Warranty**
23 **Mass. Gen. Laws c. 106 §§ 2-313 and 2A-210**
(On Behalf of the Massachusetts State Class)

24 1287. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
25 fully set forth herein.

26 1288. This count is brought on behalf of the Massachusetts State Class against all
27 Defendants.
28

1 1289. Defendants are and were at all relevant times “merchant[s]” with respect to motor
2 vehicles under M.G.L. c. 106 § 2-104(1) and is a “seller” of motor vehicles under § 2-103(1)(d).

3 1290. With respect to leases, Defendants are and were at all relevant times “lessors” of
4 motor vehicles under M.G.L. c. 106 § 2A-103(1)(p).

5 1291. The Class Vehicles are and were at all relevant times “goods” within the meaning of
6 M.G.L. c. 106 §§ 2-105(1) and 2A-103(1)(h).

7 1292. In connection with the purchase or lease of each one of its new vehicles, Defendants
8 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
9 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

10 1293. Defendants also made numerous representations, descriptions, and promises to
11 Massachusetts State Class members regarding the performance and emission controls of their
12 vehicles.

13 1294. For example, Defendants included in the warranty booklets for some or all of the
14 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
15 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
16 from defects in material and workmanship which would cause it not to meet those standards.”

17 1295. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
18 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
19 Warranty.”

20 1296. The EPA requires vehicle manufacturers to provide a Performance Warranty with
21 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
22 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
23 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
24 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
25 emission control components are covered for the first eight years or 80,000 miles (whichever
26 comes first). These major emission control components subject to the longer warranty include the
27 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
28 device or computer.

1 1297. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 1298. As manufacturers of light-duty vehicles, Defendants were required to provide these
10 warranties to purchasers or lessees of Class Vehicles.

11 1299. Defendants' warranties formed a basis of the bargain that was reached when
12 consumers purchased or leased Class Vehicles.

13 1300. Despite the existence of warranties, Defendants failed to inform Massachusetts
14 State Class members that the Class Vehicles were defective and intentionally designed and
15 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
16 disclosed to regulators and represented to consumers who purchased or leased them, and
17 Defendants failed to fix the defective emission components free of charge.

18 1301. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 1302. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 1303. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
25 insufficient to make Massachusetts State Class members whole and because Defendants have failed
26 and/or have refused to adequately provide the promised remedies within a reasonable time.

1 1304. Accordingly, recovery by Massachusetts State Class members is not restricted to the
2 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
3 and they seek all remedies as allowed by law.

4 1305. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
5 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
6 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Massachusetts State Class members were therefore
8 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 1306. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
10 through the limited remedy of repairing and correcting Defendants' defect in materials and
11 workmanship as many incidental and consequential damages have already been suffered because of
12 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
13 failure to provide such limited remedy within a reasonable time, and any limitation on
14 Massachusetts State Class members' remedies would be insufficient to make them whole.

15 1307. Finally, because of Defendants' breach of warranty as set forth herein,
16 Massachusetts State Class members assert, as additional and/or alternative remedies, the revocation
17 of acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
18 currently owned or leased, and for such other incidental and consequential damages as allowed.

19 1308. Defendants were provided reasonable notice of these issues by way of a letter sent
20 by Plaintiffs as well as the regulators' investigations.

21 1309. As a direct and proximate result of Defendants' breach of express warranties,
22 Massachusetts State Class members have been damaged in an amount to be determined at trial.

23 **MASSACHUSETTS COUNT IV:**
24 **Breach of Implied Warranty of Merchantability**
25 **Mass. Gen. Laws c. 106 §§ 2-314 and 2A-212**
26 **(On Behalf of the Massachusetts State Class)**

27 1310. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 1311. This count is brought on behalf of the Massachusetts State Class against all
2 Defendants.

3 1312. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under M.G.L. c. 106 § 2-104(1) and is a “seller” of motor vehicles under § 2-103(1)(d).

5 1313. With respect to leases, Defendants are and were at all relevant times “lessors” of
6 motor vehicles under M.G.L. c. 106 § 2A-103(1)(p).

7 1314. The Class Vehicles are and were at all relevant times “goods” within the meaning of
8 M.G.L. c. 106 §§ 2-105(1) and 2A-103(1)(h).

9 1315. A warranty that the Class Vehicles were in merchantable condition and fit for the
10 ordinary purpose for which vehicles are used is implied by law pursuant to M.G.L. c. 106 §§ 2-314
11 and 2A-212.

12 1316. These Class Vehicles, when sold or leased and at all times thereafter, were
13 materially different from vehicles Defendants submitted for emissions testing and/or did not
14 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
15 fit for the ordinary purpose for which vehicles are used.

16 1317. Defendants were provided reasonable notice of these issues by way of a letter sent
17 by Plaintiffs as well as the regulators’ investigations.

18 1318. As a direct and proximate result of Defendants’ breach of the implied warranty of
19 merchantability, Massachusetts State Class members have been damaged in an amount to be
20 proven at trial.

21 **MICHIGAN COUNT I:**
22 **Violations of the Michigan Consumer Protection Act**
23 **Mich. Comp. Laws § 445.903 *et seq.***
24 **(On Behalf of the Michigan State Class)**

25 1319. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

26 1320. This count is brought on behalf of the Michigan State Class against all Defendants.

27 1321. Michigan State Class members are “person[s]” within the meaning of the Mich.
28 Comp. Laws § 445.902(1)(d).

1 1322. Defendants are “person[s]” engaged in “trade or commerce” within the meaning of
2 the Mich. Comp. Laws § 445.902(1)(d) and (g).

3 1323. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair,
4 unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce”
5 Mich. Comp. Laws § 445.903(1). Defendants engaged in unfair, unconscionable, or deceptive
6 methods, acts or practices prohibited by the Michigan CPA, including: “(c) Representing that
7 goods or services have . . . characteristics . . . that they do not have. . . .;” “(e) Representing that
8 goods or services are of a particular standard . . . if they are of another;” “(i) Making false or
9 misleading statements of fact concerning the reasons for, existence of, or amounts of price
10 reductions;” “(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive
11 the consumer, and which fact could not reasonably be known by the consumer;” “(bb) Making a
12 representation of fact or statement of fact material to the transaction such that a person reasonably
13 believes the represented or suggested state of affairs to be other than it actually is;” and “(cc)
14 Failing to reveal facts that are material to the transaction in light of representations of fact made in
15 a positive manner.” Mich. Comp. Laws § 445.903(1).

16 1324. In the course of their business, Defendants concealed and suppressed material facts
17 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
18 emissions testing that were different from production vehicles and/or (b) falsely attesting that
19 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
20 did not.

21 1325. Michigan State Class members had no way of discerning that Defendants’
22 representations were false and misleading because Michigan State Class members did not have
23 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
24 hardware was extremely sophisticated technology.

25 1326. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
26 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
27 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
28 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a

1 transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 1327. Defendants intentionally and knowingly misrepresented material facts regarding the
4 Class Vehicles with intent to mislead the Michigan State Class.

5 1328. Defendants knew or should have known that their conduct violated the Michigan
6 CPA.

7 1329. Defendants owed the Michigan State Class a duty to disclose the illegality and
8 public health risks, the true nature of the Class Vehicles, because Defendants:

9 A. possessed exclusive knowledge that they were manufacturing, selling, and
10 distributing vehicles throughout the United States that did not perform as advertised;

11 B. intentionally concealed the foregoing from regulators and Michigan State
12 Class members; and/or

13 C. made incomplete representations about the Class Vehicles' fuel economy
14 and emissions while purposefully withholding material facts that contradicted these
15 representations.

16 1330. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
17 consumption and emissions were material to the Michigan State Class.

18 1331. Defendants' unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including the Michigan State Class, about the true
20 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
21 brands, and the true value of the Class Vehicles.

22 1332. Defendants' violations present a continuing risk to the Michigan State Class as well
23 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
24 public interest.

25 1333. Michigan State Class members suffered ascertainable loss and actual damages as a
26 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
27 disclose material information. Defendants had an ongoing duty to all their customers to refrain
28 from unfair and deceptive practices under the Michigan CPA. All owners of Class Vehicles

1 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
2 in the course of Defendants’ business.

3 1334. As a direct and proximate result of Defendants’ violations of the Michigan CPA,
4 Michigan State Class members have suffered injury-in-fact and/or actual damage.

5 1335. The Michigan State Class seeks injunctive relief to enjoin Defendants from
6 continuing its unfair and deceptive acts; monetary relief against Defendants measured as the greater
7 of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the
8 amount of \$250 for each Michigan State Class member; reasonable attorneys’ fees; and any other
9 just and proper relief available under Mich. Comp. Laws § 445.911.

10 1336. The Michigan State Class also seeks punitive damages against Defendants because
11 it carried out despicable conduct with willful and conscious disregard of the rights of others.
12 Defendants intentionally and willfully misrepresented the reliability of the Class Vehicles and
13 concealed material facts that only they knew—all to avoid the expense and public relations
14 nightmare of correcting a flaw in the Class Vehicles. Defendants’ unlawful conduct constitutes
15 oppression and fraud warranting punitive damages.

16 **MICHIGAN COUNT II:**
17 **Breach of Express Warranty**
18 **Mich. Comp. Laws §§ 440.2313 and 440.2860**
19 **(On Behalf of the Michigan State Class)**

20 1337. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
21 fully set forth herein.

22 1338. This count is brought on behalf of the Michigan State Class against all Defendants.

23 1339. Defendants are and were at all relevant times “merchant[s]” with respect to motor
24 vehicles under Mich. Comp. Laws § 440.2104(1) and “sellers” of motor vehicles under
25 § 440.2103(1)(d).

26 1340. With respect to leases, Defendants are and were at all relevant times “lessors” of
27 motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

28 1341. The Class Vehicles are and were at all relevant times “goods” within the meaning of
Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

1 1342. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

4 1343. Defendants also made numerous representations, descriptions, and promises to
5 Michigan State Class members regarding the performance and emission controls of their vehicles.

6 1344. For example, Defendants included in the warranty booklets for some or all of the
7 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
8 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
9 from defects in material and workmanship which would cause it not to meet those standards.”

10 1345. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
11 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
12 Warranty.”

13 1346. The EPA requires vehicle manufacturers to provide a Performance Warranty with
14 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
15 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
16 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
17 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
18 emission control components are covered for the first eight years or 80,000 miles (whichever
19 comes first). These major emission control components subject to the longer warranty include the
20 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
21 device or computer.

22 1347. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
23 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
24 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
25 Design and Defect Warranty required by the EPA covers repair of emission control or emission
26 related parts, which fail to function or function improperly because of a defect in materials or
27 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
28

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1348. As manufacturers of light-duty vehicles, Defendants were required to provide these
4 warranties to purchasers or lessees of Class Vehicles.

5 1349. Defendants' warranties formed a basis of the bargain that was reached when
6 consumers purchased or leased Class Vehicles.

7 1350. Despite the existence of warranties, Defendants failed to inform Michigan State
8 Class members that the Class Vehicles were defective and intentionally designed and manufactured
9 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
10 regulators and represented to consumers who purchased or leased them, and Defendants failed to
11 fix the defective emission components free of charge.

12 1351. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1352. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1353. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
19 insufficient to make Michigan State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 1354. Accordingly, recovery by the Michigan State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
23 and they seek all remedies as allowed by law.

24 1355. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
25 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
26 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Michigan State Class members were therefore induced
28 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 1356. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
2 through the limited remedy of repairing and correcting Defendants’ defect in materials and
3 workmanship as many incidental and consequential damages have already been suffered because of
4 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
5 failure to provide such limited remedy within a reasonable time, and any limitation on Michigan
6 State Class members’ remedies would be insufficient to make them whole.

7 1357. Finally, because of Defendants’ breach of warranty as set forth herein, Michigan
8 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
9 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
10 owned or leased, and for such other incidental and consequential damages as allowed.

11 1358. Defendants were provided reasonable notice of these issues by way of a letter sent
12 by Plaintiffs as well as the regulators’ investigations.

13 1359. As a direct and proximate result of Defendants’ breach of express warranties,
14 Michigan State Class members have been damaged in an amount to be determined at trial.

15 **MICHIGAN COUNT III:**
16 **Breach of Implied Warranty of Merchantability**
17 **Mich. Comp. Laws §§ 440.2314 and 440.2860**
18 **(On Behalf of the Michigan State Class)**

19 1360. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1361. This count is brought on behalf of the Michigan State Class against all Defendants.

22 1362. Defendants are and were at all relevant times “merchant[s]” with respect to motor
23 vehicles under Mich. Comp. Laws § 440.2104(1) and “sellers” of motor vehicles under
24 § 440.2103(1)(d).

25 1363. With respect to leases, Defendants are and were at all relevant times “lessors” of
26 motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).

27 1364. The Class Vehicles are and were at all relevant times “goods” within the meaning of
28 Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).

1 1365. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Mich. Comp. Laws
3 §§ 440.2314 and 440.2862.

4 1366. These Class Vehicles, when sold or leased and at all times thereafter, were
5 materially different from vehicles Defendants submitted for emissions testing and/or did not
6 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
7 fit for the ordinary purpose for which vehicles are used.

8 1367. Defendants were provided reasonable notice of these issues by way of a letter sent
9 by Plaintiffs as well as the regulators’ investigations.

10 1368. As a direct and proximate result of Defendants’ breach of the implied warranty of
11 merchantability, Michigan State Class members have been damaged in an amount to be proven at
12 trial.

13 **MINNESOTA COUNT I:**
14 **Violations of the Minnesota Prevention of Consumer Fraud Act**
15 **Minn. Stat. § 325F.68 *et seq.***
16 **(On Behalf of the Minnesota State Class)**

17 1369. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

18 1370. This count is brought on behalf of the Minnesota State Class against all Defendants.

19 1371. The Class Vehicles constitute “merchandise” within the meaning of Minn. Stat.
20 § 325F.68(2).

21 1372. The Minnesota Prevention of Consumer Fraud Act (“Minnesota CFA”) prohibits
22 “[t]he act, use, or employment by any person of any fraud, false pretense, false promise,
23 misrepresentation, misleading statement or deceptive practice, with the intent that others rely
24 thereon in connection with the sale of any merchandise, whether or not any person has in fact been
25 misled, deceived, or damaged thereby” Minn. Stat. § 325F.69(1). Defendants participated in
26 misleading, false, or deceptive acts that violated the Minnesota CFA.

27 1373. In the course of their business, Defendants concealed and suppressed material facts
28 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
emissions testing that were different from production vehicles and/or (b) falsely attesting that

1 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
2 did not.

3 1374. Minnesota State Class members had no way of discerning that Defendants'
4 representations were false and misleading because Minnesota State Class members did not have
5 access to Defendants' emissions certification test vehicles and Defendants' emissions-related
6 hardware was extremely sophisticated technology.

7 1375. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
8 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
9 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
10 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
11 transaction involving Class Vehicles has been supplied in accordance with a previous
12 representation when it has not.

13 1376. Defendants intentionally and knowingly misrepresented material facts regarding the
14 Class Vehicles with intent to mislead the Minnesota State Class.

15 1377. Defendants knew or should have known that their conduct violated the Minnesota
16 CFA.

17 1378. Defendants owed the Minnesota State Class a duty to disclose the illegality and
18 public health risks, the true nature of the Class Vehicles, because Defendants:

19 A. possessed exclusive knowledge that they were manufacturing, selling, and
20 distributing vehicles throughout the United States that did not perform as advertised;

21 B. intentionally concealed the foregoing from regulators and Minnesota State
22 Class members; and/or

23 C. made incomplete representations about the Class Vehicles' fuel economy
24 and emissions while purposefully withholding material facts that contradicted these
25 representations.

26 1379. Defendants' concealment of the Class Vehicles' true fuel consumption and
27 emissions was material to the Minnesota State Class.

28

1 1380. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including the Minnesota State Class, about the true
3 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants’
4 brands, and the true value of the Class Vehicles.

5 1381. Defendants’ violations present a continuing risk to the Minnesota State Class as well
6 as to the general public. Defendants’ unlawful acts and practices complained of herein affect the
7 public interest.

8 1382. Minnesota State Class members suffered ascertainable loss and actual damages as a
9 direct and proximate result of Defendants’ misrepresentations and concealment of and failure to
10 disclose material information. Defendants had an ongoing duty to all their customers to refrain
11 from unfair and deceptive practices under the Minnesota CFA. All owners of Class Vehicles
12 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
13 in the course of Defendants’ business.

14 1383. As a direct and proximate result of Defendants’ violations of the Minnesota CFA,
15 Minnesota State Class members have suffered injury-in-fact and/or actual damage.

16 1384. Pursuant to Minn. Stat. § 8.31(3a), Minnesota State Class members seek actual
17 damages, attorneys’ fees, and any other just and proper relief available under the Minnesota CFA.

18 1385. Minnesota State Class members also seek punitive damages under Minn. Stat.
19 § 549.20(1)(a) given the clear and convincing evidence that Defendants’ acts show deliberate
20 disregard for the rights of others.

21 **MINNESOTA COUNT II:**
22 **Violations of the Minnesota Uniform Deceptive Trade Practices Act**
23 **Minn. Stat. § 325D.43-48 *et seq.***
(On Behalf of the Minnesota State Class)

24 1386. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

25 1387. This count is brought on behalf the Minnesota State Class against all Defendants.

26 1388. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”) prohibits
27 deceptive trade practices, which occur when a person “(5) represents that goods or services have
28 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not

1 have or that a person has a sponsorship, approval, status, affiliation, or connection that the person
2 does not have;” “(7) represents that goods or services are of a particular standard, quality, or grade,
3 or that goods are of a particular style or model, if they are of another;” and “(9) advertises goods or
4 services with intent not to sell them as advertised.” Minn. Stat. § 325D.44. In the course of the
5 Defendants’ business, it engaged in deceptive practices by representing that Class Vehicles have
6 sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have;
7 representing that Class Vehicles are of a particular standard, quality, or grade, or that goods are of a
8 particular style or model, if they are of another; and advertising Class Vehicles with intent not to
9 sell them as advertised. Defendants participated in misleading, false, or deceptive acts that violated
10 the Minnesota DTPA.

11 1389. By submitting vehicles for emissions testing that were different from production
12 vehicles, falsely attesting that certain vehicles’ high performance (Sport Plus) mode could pass
13 emissions tests when they in fact did not, by marketing its vehicles as reliable, environmentally
14 clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued
15 environmental cleanliness and efficiency, and stood behind its vehicles after they were sold,
16 Defendants engaged in deceptive business practices prohibited by the Minnesota DTPA.

17 1390. Defendants’ actions as set forth above occurred in the conduct of trade or
18 commerce.

19 1391. In the course of their business, Defendants concealed and suppressed material facts
20 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
21 emissions testing that were different from production vehicles and/or (b) falsely attesting that
22 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
23 did not.

24 1392. Minnesota State Class members had no way of discerning that Defendants’
25 representations were false and misleading because Minnesota State Class members did not have
26 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
27 hardware was extremely sophisticated technology.
28

1 1393. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
5 transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 1394. Defendants intentionally and knowingly misrepresented material facts regarding the
8 Class Vehicles with intent to mislead the Minnesota State Class.

9 1395. Defendants knew or should have known that their conduct violated the Minnesota
10 DTPA.

11 1396. Defendants owed the Minnesota State Class a duty to disclose the illegality and
12 public health risks, the true nature of the Class Vehicles, because Defendants:

13 A. possessed exclusive knowledge that they were manufacturing, selling, and
14 distributing vehicles throughout the United States that did not perform as advertised;

15 B. intentionally concealed the foregoing from regulators and Minnesota State
16 Class members; and/or

17 C. made incomplete representations about the Class Vehicles' fuel economy
18 and emissions while purposefully withholding material facts that contradicted these
19 representations.

20 1397. Defendants' concealment of the true characteristics of the Class Vehicles' true fuel
21 consumption and emissions were material to the Minnesota State Class.

22 1398. Defendants' unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including the Minnesota State Class, about the true
24 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
25 brands, the devaluing of environmental cleanliness and integrity at Defendant companies, and the
26 true value of the Class Vehicles.

1 1399. Defendants’ violations present a continuing risk to the Minnesota State Class as well
2 as to the general public. Defendants’ unlawful acts and practices complained of herein affect the
3 public interest.

4 1400. Minnesota State Class members suffered ascertainable loss and actual damages as a
5 direct and proximate result of Defendants’ misrepresentations and concealment of and failure to
6 disclose material information. Defendants had an ongoing duty to all their customers to refrain
7 from unfair and deceptive practices under the Minnesota DTPA. All owners of Class Vehicles
8 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
9 in the course of Defendants’ business.

10 1401. As a direct and proximate result of Defendants’ violations of the Minnesota DTPA,
11 Minnesota State Class members have suffered injury-in-fact and/or actual damage.

12 1402. Pursuant Minn. Stat. §§ 8.31(3a) and 325D.45, the Minnesota State Class seeks
13 actual damages, attorneys’ fees, and any other just and proper relief available under the Minnesota
14 DTPA.

15 **MINNESOTA COUNT III:**
16 **Breach of Express Warranty**
17 **Minn. Stat. §§ 336.2-313 and 336.2A-210**
18 **(On Behalf of the Minnesota State Class)**

19 1403. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 1404. This count is brought on behalf of the Minnesota State Class against all Defendants.

22 1405. Defendants are and were at all relevant times “merchant[s]” with respect to motor
23 vehicles under Minn. Stat. § 336.2-104(1) and “sellers” of motor vehicles under § 336.2-103(1)(d).

24 1406. With respect to leases, Defendants are and were at all relevant times “lessors” of
25 motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

26 1407. The Class Vehicles are and were at all relevant times “goods” within the meaning of
27 Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).
28

1 1408. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

4 1409. Defendants also made numerous representations, descriptions, and promises to
5 Minnesota State Class members regarding the performance and emission controls of their vehicles.

6 1410. For example, Defendants included in the warranty booklets for some or all of the
7 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
8 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
9 from defects in material and workmanship which would cause it not to meet those standards.”

10 1411. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
11 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
12 Warranty.”

13 1412. The EPA requires vehicle manufacturers to provide a Performance Warranty with
14 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
15 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
16 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
17 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
18 emission control components are covered for the first eight years or 80,000 miles (whichever
19 comes first). These major emission control components subject to the longer warranty include the
20 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
21 device or computer.

22 1413. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
23 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
24 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
25 Design and Defect Warranty required by the EPA covers repair of emission control or emission
26 related parts, which fail to function or function improperly because of a defect in materials or
27 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
28

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1414. As manufacturers of light-duty vehicles, Defendants were required to provide these
4 warranties to purchasers or lessees of Class Vehicles.

5 1415. Defendants' warranties formed a basis of the bargain that was reached when
6 consumers purchased or leased Class Vehicles.

7 1416. Despite the existence of warranties, Defendants failed to inform Minnesota State
8 Class members that the Class Vehicles were defective and intentionally designed and manufactured
9 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
10 regulators and represented to consumers who purchased or leased them, and Defendants failed to
11 fix the defective emission components free of charge.

12 1417. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1418. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1419. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
19 insufficient to make Minnesota State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 1420. Accordingly, recovery by Minnesota State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
23 and they seek all remedies as allowed by law.

24 1421. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
25 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
26 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Minnesota State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 1422. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
2 through the limited remedy of repairing and correcting Defendants’ defect in materials and
3 workmanship as many incidental and consequential damages have already been suffered because of
4 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
5 failure to provide such limited remedy within a reasonable time, and any limitation on the
6 Minnesota State Class members’ remedies would be insufficient to make them whole.

7 1423. Finally, because of Defendants’ breach of warranty as set forth herein, Minnesota
8 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
9 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
10 owned or leased, and for such other incidental and consequential damages as allowed.

11 1424. Defendants were provided reasonable notice of these issues by way of a letter sent
12 by Plaintiffs as well as the regulators’ investigations.

13 1425. As a direct and proximate result of Defendants’ breach of express warranties,
14 Minnesota State Class members have been damaged in an amount to be determined at trial.

15 **MINNESOTA COUNT IV:**
16 **Breach of Implied Warranty of Merchantability**
17 **Minn. Stat. §§ 336.2-314 and 336.2A-212**
18 **(On Behalf of the Minnesota State Class)**

19 1426. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
20 forth herein.

21 1427. This count is brought on behalf of the Minnesota State Class against all Defendants.

22 1428. Defendants are and were at all relevant times “merchant[s]” with respect to motor
23 vehicles under Minn. Stat. § 336.2-104(1) and “sellers” of motor vehicles under § 336.2-103(1)(d).

24 1429. With respect to leases, Defendants are and were at all relevant times “lessors” of
25 motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

26 1430. The Class Vehicles are and were at all relevant times “goods” within the meaning of
27 Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).
28

1 1431. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Minn. Stat.
3 §§ 336.2-314 and 336.2A-212.

4 1432. These Class Vehicles, when sold or leased and at all times thereafter, were
5 materially different from vehicles Defendants submitted for emissions testing and/or did not
6 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
7 fit for the ordinary purpose for which vehicles are used.

8 1433. Defendants were provided reasonable notice of these issues by way of a letter sent
9 by Plaintiffs as well as the regulators' investigations.

10 1434. As a direct and proximate result of Defendants' breach of the implied warranty of
11 merchantability, Minnesota State Class members have been damaged in an amount to be proven at
12 trial.

13 **MISSISSIPPI COUNT I:**
14 **Violations of Mississippi Consumer Protection Act**
15 **Miss. Code. Ann. § 75-24-1, et seq.**
16 **(On Behalf of the Mississippi State Class)**

17 1435. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

18 1436. This count is brought on behalf of the Mississippi State Class against all Defendants.

19 1437. The Mississippi Consumer Protection Act ("Mississippi CPA") prohibits "unfair or
20 deceptive trade practices in or affecting commerce." Miss. Code. Ann. § 75-24-5(1). Unfair or
21 deceptive practices include, but are not limited to, "(e) Representing that goods or services have
22 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not
23 have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not
24 have;" "(g) Representing that goods or services are of a particular standard, quality, or grade, or that
25 goods are of a particular style or model, if they are of another;" and "(i) Advertising goods or
26 services with intent not to sell them as advertised." Miss. Code. Ann. § 75-24-5. Defendants
27 participated in deceptive trade practices that violated the Mississippi CPA as described herein,
28 including representing that Class Vehicles have characteristics, uses, benefits, and qualities which

1 they do not have; representing that Class Vehicles are of a particular standard and quality when
2 they are not; and advertising Class Vehicles with the intent not to sell them as advertised.

3 1438. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
5 emissions testing that were different from production vehicles and/or (b) falsely attesting that
6 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
7 did not.

8 1439. Mississippi State Class members had no way of discerning that Defendants'
9 representations were false and misleading because Mississippi State Class members did not have
10 access to Defendants' emissions certification test vehicles and Defendants' emissions-related
11 hardware was extremely sophisticated technology.

12 1440. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
13 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
14 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
15 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
16 transaction involving Class Vehicles has been supplied in accordance with a previous
17 representation when it has not.

18 1441. Defendants intentionally and knowingly misrepresented material facts regarding the
19 Class Vehicles with intent to mislead the Mississippi State Class.

20 1442. Defendants knew or should have known that their conduct violated the Mississippi
21 CPA.

22 1443. Defendants owed the Mississippi State Class a duty to disclose the illegality and
23 public health risks, the true nature of the Class Vehicles, because Defendants:

24 A. possessed exclusive knowledge that they were manufacturing, selling, and
25 distributing vehicles throughout the United States that did not perform as advertised;

26 B. intentionally concealed the foregoing from regulators and Mississippi State
27 Class members; and/or
28

1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 1444. Defendants' concealment of the Class Vehicles' true fuel consumption and
5 emissions were material to the Mississippi State Class.

6 1445. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the Mississippi State Class, about the true
8 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
9 brands, and the true value of the Class Vehicles.

10 1446. Defendants' violations present a continuing risk to the Mississippi State Class as
11 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
12 the public interest.

13 1447. Mississippi State Class members suffered ascertainable loss and actual damages as a
14 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
15 disclose material information. Defendants had an ongoing duty to all their customers to refrain
16 from unfair and deceptive practices under the Mississippi CPA. All owners of Class Vehicles
17 suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made
18 in the course of Defendants' business.

19 1448. As a direct and proximate result of Defendants' violations of the Mississippi CPA,
20 Mississippi State Class members have suffered injury-in-fact and/or actual damage.

21 1449. Plaintiffs' seek actual damages in an amount to be determined at trial any other just
22 and proper relief available under the Mississippi CPA.

23 **MISSISSIPPI COUNT II:**
24 **Breach of Express Warranty**
25 **Miss. Code §§ 75-2-313 and 75-2A-210**
26 **(On Behalf of the Mississippi State Class)**

27 1450. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
28 fully set forth herein.

1451. This count is brought on behalf of the Mississippi State Class against all Defendants.

1 1452. Defendants are and were at all relevant times “merchant[s]” with respect to motor
2 vehicles under Miss. Code § 75-2-104(1) and “sellers” of motor vehicles under § 75-2-103(1)(d).

3 1453. With respect to leases, Defendants are and were at all relevant times “lessors” of
4 motor vehicles under Miss. Code § 75-2A-103(1)(p).

5 1454. The Class Vehicles are and were at all relevant times “goods” within the meaning of
6 Miss. Code §§ 75-2-105(1) and 75-2A-103(1)(h).

7 1455. In connection with the purchase or lease of each one of its new vehicles, Defendants
8 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
9 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

10 1456. Defendants also made numerous representations, descriptions, and promises to
11 Mississippi State Class members regarding the performance and emission controls of their
12 vehicles.

13 1457. For example, Defendants included in the warranty booklets for some or all of the
14 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
15 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
16 from defects in material and workmanship which would cause it not to meet those standards.”

17 1458. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
18 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
19 Warranty.”

20 1459. The EPA requires vehicle manufacturers to provide a Performance Warranty with
21 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
22 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
23 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
24 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
25 emission control components are covered for the first eight years or 80,000 miles (whichever
26 comes first). These major emission control components subject to the longer warranty include the
27 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
28 device or computer.

1 1460. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
2 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
3 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
4 Design and Defect Warranty required by the EPA covers repair of emission control or emission
5 related parts, which fail to function or function improperly because of a defect in materials or
6 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
7 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
8 comes first.

9 1461. As manufacturers of light-duty vehicles, Defendants were required to provide these
10 warranties to purchasers or lessees of Class Vehicles.

11 1462. Defendants' warranties formed a basis of the bargain that was reached when
12 consumers purchased or leased Class Vehicles.

13 1463. Despite the existence of warranties, Defendants failed to inform Mississippi State
14 Class members that the Class Vehicles were defective and intentionally designed and manufactured
15 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
16 regulators and represented to consumers who purchased or leased them, and Defendants failed to
17 fix the defective emission components free of charge.

18 1464. Defendants breached the express warranty promising to repair and correct
19 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
20 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

21 1465. Affording Defendants a reasonable opportunity to cure their breach of written
22 warranties would be unnecessary and futile here.

23 1466. Furthermore, the limited warranty promising to repair and correct Defendants'
24 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
25 insufficient to make Mississippi State Class members whole and because Defendants have failed
26 and/or have refused to adequately provide the promised remedies within a reasonable time.

1 1467. Accordingly, recovery by Mississippi State Class members is not restricted to the
2 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
3 and they seek all remedies as allowed by law.

4 1468. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
5 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
6 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Mississippi State Class members were therefore
8 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 1469. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
10 through the limited remedy of repairing and correcting Defendants' defect in materials and
11 workmanship as many incidental and consequential damages have already been suffered because of
12 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
13 failure to provide such limited remedy within a reasonable time, and any limitation on Mississippi
14 State Class members' remedies would be insufficient to make them whole.

15 1470. Finally, because of Defendants' breach of warranty as set forth herein, Mississippi
16 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
17 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
18 owned or leased, and for such other incidental and consequential damages as allowed.

19 1471. Defendants were provided reasonable notice of these issues by way of a letter sent
20 by Plaintiffs as well as the regulators' investigations.

21 1472. As a direct and proximate result of Defendants' breach of express warranties,
22 Mississippi State Class members have been damaged in an amount to be determined at trial.

23 **MISSISSIPPI COUNT III:**
24 **Breach of Implied Warranty of Merchantability**
25 **Miss. Code §§ 75-2-314 and 75-2A-212**
26 **(On Behalf of the Mississippi State Class)**

27 1473. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1474. This count is brought on behalf of the Mississippi State Class against all Defendants.

1 1475. Defendants are and were at all relevant times “merchant[s]” with respect to motor
2 vehicles under Miss. Code § 75-2-104(1) and “sellers” of motor vehicles under § 75-2-103(1)(d).

3 1476. With respect to leases, Defendants are and were at all relevant times “lessors” of
4 motor vehicles under Miss. Code § 75-2A-103(1)(p).

5 1477. The Class Vehicles are and were at all relevant times “goods” within the meaning of
6 Miss. Code §§ 75-2-105(1) and 75-2A-103(1)(h).

7 1478. A warranty that the Class Vehicles were in merchantable condition and fit for the
8 ordinary purpose for which vehicles are used is implied by law pursuant to Miss. Code §§ 75-2-314
9 and 75-2A-212.

10 1479. These Class Vehicles, when sold or leased and at all times thereafter, were
11 materially different from vehicles Defendants submitted for emissions testing and/or did not
12 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
13 fit for the ordinary purpose for which vehicles are used.

14 1480. Defendants were provided reasonable notice of these issues by way of a letter sent
15 by Plaintiffs as well as the regulators’ investigations.

16 1481. As a direct and proximate result of Defendants’ breach of the implied warranty of
17 merchantability, Mississippi State Class members have been damaged in an amount to be proven at
18 trial.

19 **MISSOURI COUNT I:**
20 **Violations of the Missouri Merchandising Practices Act**
21 **Mo. Rev. Stat. § 407.010 *et seq.***
22 **(On Behalf of the Missouri State Class)**

23 1482. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

24 1483. Plaintiff Lee Marks (for the purposes of this count, “Plaintiff”) brings this claim on
25 behalf of himself and the Missouri State Class against all Defendants.

26 1484. Defendants, Plaintiff, and the Missouri State Class are “persons” within the
27 meaning of Mo. Rev. Stat. § 407.010(5).

28 1485. Defendants engaged in “trade” or “commerce” in the State of Missouri within the
meaning of Mo. Rev. Stat. § 407.010(7).

1 1486. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the
2 “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation,
3 unfair practice, or the concealment, suppression, or omission of any material fact in connection
4 with the sale or advertisement of any merchandise Mo. Rev. Stat. § 407.020.

5 1487. In the course of their business, Defendants concealed and suppressed material facts
6 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
7 emissions testing that were different from production vehicles and/or (b) falsely attesting that
8 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
9 did not.

10 1488. Plaintiff and Missouri State Class members had no way of discerning that
11 Defendants’ representations were false and misleading because Plaintiff and Missouri State Class
12 members did not have access to Defendants’ emissions certification test vehicles and Defendants’
13 emissions-related hardware was extremely sophisticated technology.

14 1489. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
18 transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 1490. Defendants intentionally and knowingly misrepresented material facts regarding the
21 Class Vehicles with intent to mislead the Missouri State Class.

22 1491. Defendants knew or should have known that their conduct violated the Missouri
23 MPA.

24 1492. Defendants owed the Plaintiff and Missouri State Class a duty to disclose the
25 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

26 A. possessed exclusive knowledge that they were manufacturing, selling, and
27 distributing vehicles throughout the United States that did not perform as advertised;
28

1 B. intentionally concealed the foregoing from regulators and Missouri State
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles’ fuel economy
4 and emissions while purposefully withholding material facts that contradicted these
5 representations.

6 1493. Defendants’ concealment of the true fuel consumption and emissions was material
7 to the Missouri State Class.

8 1494. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
9 deceive regulators and reasonable consumers, including Missouri State Class, about the true
10 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants’
11 brands, and the true value of the Class Vehicles.

12 1495. Defendants’ violations present a continuing risk to Plaintiff, the Missouri State
13 Class, and the general public. Defendants’ unlawful acts and practices complained of herein affect
14 the public interest.

15 1496. Plaintiff and Missouri State Class members suffered ascertainable loss and actual
16 damages as a direct and proximate result of Defendants’ misrepresentations and concealment of
17 and failure to disclose material information. Defendants had an ongoing duty to all their customers
18 to refrain from unfair and deceptive practices under the Missouri MPA. All owners of Class
19 Vehicles suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and
20 practices made in the course of Defendants’ business.

21 1497. As a direct and proximate result of Defendants’ violations of the Missouri MPA,
22 Plaintiff and Missouri State Class members have suffered injury-in-fact and/or actual damage.

23 1498. Defendants are liable to Plaintiff and the Missouri State Class for damages in
24 amounts to be proven at trial, including attorneys’ fees, costs, and punitive damages, as well as
25 injunctive relief enjoining Defendants’ unfair and deceptive practices, and any other just and proper
26 relief under Mo. Rev. Stat. § 407.025.

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**MISSOURI COUNT II:
Breach of Express Warranty
Mo. Stat. §§ 400.2-313 and 400.2A-210
(On Behalf of the Missouri State Class)**

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2
3 1499. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 1500. Plaintiff Lee Marks (for the purposes of this count, “Plaintiff”) brings this claim on
6 behalf of himself and the Missouri State Class against all Defendants.

7 1501. Defendants are and were at all relevant times “merchant[s]” with respect to motor
8 vehicles under Mo. Stat. § 400.2-104(1) and “sellers” of motor vehicles under § 400.2-103(1)(d).

9 1502. With respect to leases, Defendants are and were at all relevant times “lessors” of
10 motor vehicles under Mo. Stat. § 400.2A-103(1)(p).

11 1503. The Class Vehicles are and were at all relevant times “goods” within the meaning of
12 Mo. Stat. § 400.2-105(1) and Mo. Stat. § 400.2A-103(1)(h).

13 1504. In connection with the purchase or lease of each one of its new vehicles, Defendants
14 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
15 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

16 1505. Defendants also made numerous representations, descriptions, and promises to
17 Missouri State Class members regarding the performance and emission controls of their vehicles.

18 1506. For example, Defendants included in the warranty booklets for some or all of the
19 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
20 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
21 from defects in material and workmanship which would cause it not to meet those standards.”

22 1507. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
23 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
24 Warranty.”

25 1508. The EPA requires vehicle manufacturers to provide a Performance Warranty with
26 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
27 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
28

1 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
2 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
3 emission control components are covered for the first eight years or 80,000 miles (whichever
4 comes first). These major emission control components subject to the longer warranty include the
5 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
6 device or computer.

7 1509. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
8 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
9 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
10 Design and Defect Warranty required by the EPA covers repair of emission control or emission
11 related parts, which fail to function or function improperly because of a defect in materials or
12 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
13 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
14 comes first.

15 1510. As manufacturers of light-duty vehicles, Defendants were required to provide these
16 warranties to purchasers or lessees of Class Vehicles.

17 1511. Defendants' warranties formed a basis of the bargain that was reached when
18 consumers purchased or leased Class Vehicles.

19 1512. Despite the existence of warranties, Defendants failed to inform Missouri State
20 Class members that the Class Vehicles were defective and intentionally designed and manufactured
21 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
22 regulators and represented to consumers who purchased or leased them, and Defendants failed to
23 fix the defective emission components free of charge.

24 1513. Defendants breached the express warranty promising to repair and correct
25 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
26 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

27 1514. Affording Defendants a reasonable opportunity to cure their breach of written
28 warranties would be unnecessary and futile here.

1 1515. Furthermore, the limited warranty promising to repair and correct Defendants’
2 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
3 insufficient to make Plaintiff and Missouri State Class members whole and because Defendants
4 have failed and/or have refused to adequately provide the promised remedies within a reasonable
5 time.

6 1516. Accordingly, recovery by Plaintiff and Missouri State Class members is not
7 restricted to the limited warranty promising to repair and correct Defendants’ defect in materials
8 and workmanship, and they seek all remedies as allowed by law.

9 1517. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
10 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
11 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
12 material facts regarding the Class Vehicles. Plaintiff and Missouri State Class members were
13 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

14 1518. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
15 through the limited remedy of repairing and correcting Defendants’ defect in materials and
16 workmanship as many incidental and consequential damages have already been suffered because of
17 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
18 failure to provide such limited remedy within a reasonable time, and any limitation on Missouri
19 State Class members’ remedies would be insufficient to make them whole.

20 1519. Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiff and
21 Missouri State Class members assert, as additional and/or alternative remedies, the revocation of
22 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
23 currently owned or leased, and for such other incidental and consequential damages as allowed.

24 1520. Defendants were provided reasonable notice of these issues by way of a letter sent
25 by Plaintiff as well as the regulators’ investigations.

26 1521. As a direct and proximate result of Defendants’ breach of express warranties,
27 Missouri State Class members have been damaged in an amount to be determined at trial.
28

**MISSOURI COUNT III:
Breach of Implied Warranty of Merchantability
Mo. Stat. §§ 400.2-314 and 400.2A-212
(On Behalf of the Missouri State Class)**

1522. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

1523. Plaintiff Lee Marks (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Missouri State Class against all Defendants.

1524. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Mo. Stat. § 400.2-104(1) and “sellers” of motor vehicles under § 400.2-103(1)(d).

1525. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Mo. Stat. § 400.2A-103(1)(p).

1526. The Class Vehicles are and were at all relevant times “goods” within the meaning of Mo. Stat. § 400.2-105(1) and Mo. Stat. § 400.2A-103(1)(h).

1527. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Mo. Stat. § 400.2-314 and Mo. Stat. § 400.2A-212.

1528. These Class Vehicles, when sold or leased and at all times thereafter, were materially different from vehicles Defendants submitted for emissions testing and/or did not comply with emissions regulations when being driven in Sport Plus mode, and were therefore not fit for the ordinary purpose for which vehicles are used.

1529. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs as well as the regulators’ investigations.

1530. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiff and Missouri State Class members have been damaged in an amount to be proven at trial.

**MONTANA COUNT I:
Violations of the Montana Unfair Trade Practices and Consumer Protection Act of 1973
Mont. Code Ann. § 30-14-101 *et seq.*
(On Behalf of the Montana State Class)**

1531. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1 1532. This count is brought on behalf of the Montana State Class against all Defendants.

2 1533. Defendants and the Montana State Class are “persons” within the meaning of Mont.
3 Code Ann. § 30-14-102(6).

4 1534. Montana State Class members are “consumer[s]” under MONT. CODE ANN.
5 § 30-14-102(1).

6 1535. The sale or lease of the Class Vehicles to Montana State Class members occurred
7 within “trade and commerce” within the meaning of Mont. Code Ann. § 30-14-102(8), and
8 Defendants committed deceptive and unfair acts in the conduct of “trade and commerce” as defined
9 in that statutory section.

10 1536. The Montana Unfair Trade Practices and Consumer Protection Act (“Montana
11 CPA”) makes unlawful any “unfair methods of competition and unfair or deceptive acts or
12 practices in the conduct of any trade or commerce.” Mont. Code Ann. § 30-14-103.

13 1537. In the course of their business, Defendants concealed and suppressed material facts
14 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
15 emissions testing that were different from production vehicles and/or (b) falsely attesting that
16 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
17 did not.

18 1538. Montana State Class members had no way of discerning that Defendants’
19 representations were false and misleading because Montana State Class members did not have
20 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
21 hardware was extremely sophisticated technology.

22 1539. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
23 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
24 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
25 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
26 transaction involving Class Vehicles has been supplied in accordance with a previous
27 representation when it has not.

28

1 1540. Defendants intentionally and knowingly misrepresented material facts regarding the
2 Class Vehicles with intent to mislead the Montana State Class.

3 1541. Defendants knew or should have known that their conduct violated the Montana
4 CPA.

5 1542. Defendants owed the Montana State Class a duty to disclose the illegality and public
6 health risks, the true nature of the Class Vehicles, because Defendants:

7 A. possessed exclusive knowledge that they were manufacturing, selling, and
8 distributing vehicles throughout the United States that did not perform as advertised;

9 B. intentionally concealed the foregoing from regulators and Montana State
10 Class members; and/or

11 C. made incomplete representations about the Class Vehicles' fuel economy
12 and emissions while purposefully withholding material facts that contradicted these
13 representations.

14 1543. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
15 economy and emissions was material to the Montana State Class.

16 1544. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including the Montana State Class, about the true
18 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
19 brands, and the true value of the Class Vehicles.

20 1545. Defendants' violations present a continuing risk to the Montana State Class as well
21 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
22 public interest.

23 1546. Montana State Class members suffered ascertainable loss and actual damages as a
24 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
25 disclose material information. Defendants had an ongoing duty to all their customers to refrain
26 from unfair and deceptive practices under the Montana CPA. All owners of Class Vehicles suffered
27 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
28 course of Defendants' business.

1 1547. As a direct and proximate result of Defendants’ violations of the Montana CPA,
2 Montana State Class members have suffered injury-in-fact and/or actual damage.

3 1548. Because Defendants’ unlawful methods, acts, and practices have caused Montana
4 State Class members to suffer an ascertainable loss of money and property, the Montana State Class
5 seeks from Defendants actual damages or \$500, whichever is greater, discretionary treble damages,
6 reasonable attorneys’ fees, an order enjoining Defendants’ unfair, unlawful, and/or deceptive
7 practices, and any other relief the Court considers necessary or proper, under Mont. Code Ann.
8 § 30-14-133.

9 **MONTANA COUNT II:**
10 **Breach of Express Warranty**
11 **Mont. Code §§ 30-2-313 and 30-2A-210**
12 **(On Behalf of the Montana State Class)**

13 1549. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
14 fully set forth herein.

15 1550. This count is brought on behalf of the Montana State Class against all Defendants.

16 1551. Defendants are and were at all relevant times “merchant[s]” with respect to motor
17 vehicles under Mont. Code § 30-2-104(1) and “sellers” of motor vehicles under § 30-2-103(1)(d).

18 1552. With respect to leases, Defendants are and were at all relevant times “lessors” of
19 motor vehicles under Mont. Code § 30-2A-103(1)(p).

20 1553. The Class Vehicles are and were at all relevant times “goods” within the meaning of
21 Mont. Code §§ 30-2-105(1) and 30-2A-103(1)(h).

22 1554. In connection with the purchase or lease of each one of its new vehicles, Defendants
23 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
24 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

25 1555. Defendants also made numerous representations, descriptions, and promises to
26 Montana State Class members regarding the performance and emission controls of their vehicles.

27 1556. For example, Defendants included in the warranty booklets for some or all of the
28 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the

1 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
2 from defects in material and workmanship which would cause it not to meet those standards.”

3
4 1557. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
5 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
6 Warranty.”

7
8 1558. The EPA requires vehicle manufacturers to provide a Performance Warranty with
9 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
10 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
11 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
12 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
13 emission control components are covered for the first eight years or 80,000 miles (whichever
14 comes first). These major emission control components subject to the longer warranty include the
15 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
16 device or computer.

17
18 1559. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
19 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
20 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
21 Design and Defect Warranty required by the EPA covers repair of emission control or emission
22 related parts, which fail to function or function improperly because of a defect in materials or
23 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
24 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
25 comes first.

26
27 1560. As manufacturers of light-duty vehicles, Defendants were required to provide these
28 warranties to purchasers or lessees of Class Vehicles.

1561. Defendants’ warranties formed a basis of the bargain that was reached when
consumers purchased or leased Class Vehicles.

1 1562. Despite the existence of warranties, Defendants failed to inform Montana State
2 Class members that the Class Vehicles were defective and intentionally designed and manufactured
3 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
4 regulators and represented to consumers who purchased or leased them, and Defendants failed to
5 fix the defective emission components free of charge.

6 1563. Defendants breached the express warranty promising to repair and correct
7 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
8 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

9 1564. Affording Defendants a reasonable opportunity to cure their breach of written
10 warranties would be unnecessary and futile here.

11 1565. Furthermore, the limited warranty promising to repair and correct Defendants'
12 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
13 insufficient to make Montana State Class members whole and because Defendants have failed
14 and/or have refused to adequately provide the promised remedies within a reasonable time.

15 1566. Accordingly, recovery by Montana State Class members is not restricted to the
16 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
17 and they seek all remedies as allowed by law.

18 1567. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
19 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
20 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
21 material facts regarding the Class Vehicles. Montana State Class members were therefore induced
22 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

23 1568. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
24 through the limited remedy of repairing and correcting Defendants' defect in materials and
25 workmanship as many incidental and consequential damages have already been suffered because of
26 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
27 failure to provide such limited remedy within a reasonable time, and any limitation on Montana
28 State Class members' remedies would be insufficient to make them whole.

1 1569. Finally, because of Defendants’ breach of warranty as set forth herein, Montana
2 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
3 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
4 owned or leased, and for such other incidental and consequential damages as allowed.

5 1570. Defendants were provided reasonable notice of these issues by way of a letter sent
6 by Plaintiffs as well as the regulators’ investigations.

7 1571. As a direct and proximate result of Defendants’ breach of express warranties,
8 Montana State Class members have been damaged in an amount to be determined at trial.

9 **MONTANA COUNT III:**
10 **Breach of Implied Warranty of Merchantability**
11 **Mont. Code §§ 30-2-314 and 30-2A-212**
12 **(On Behalf of the Montana State Class)**

13 1572. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 1573. This count is brought on behalf of the Montana State Class against all Defendants.

16 1574. Defendants are and were at all relevant times “merchant[s]” with respect to motor
17 vehicles under Mont. Code § 30-2-104(1) and “sellers” of motor vehicles under § 30-2-103(1)(d).

18 1575. With respect to leases, Defendants are and were at all relevant times “lessors” of
19 motor vehicles under Mont. Code § 30-2A-103(1)(p).

20 1576. The Class Vehicles are and were at all relevant times “goods” within the meaning of
21 Mont. Code §§ 30-2-105(1) and 30-2A-103(1)(h).

22 1577. A warranty that the Class Vehicles were in merchantable condition and fit for the
23 ordinary purpose for which vehicles are used is implied by law pursuant to Mont. Code
24 §§ 30-2-314 and 30-2A-212.

25 1578. These Class Vehicles, when sold or leased and at all times thereafter, were
26 materially different from vehicles Defendants submitted for emissions testing and/or did not
27 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
28 fit for the ordinary purpose for which vehicles are used.

1 1579. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators' investigations.

3 1580. As a direct and proximate result of Defendants' breach of the implied warranty of
4 merchantability, Montana State Class members have been damaged in an amount to be proven at
5 trial.

6 **NEBRASKA COUNT I:**
7 **Violations of the Nebraska Consumer Protection Act**
8 **Neb. Rev. Stat. § 59-1601 *et seq.***
9 **(On Behalf of the Nebraska State Class)**

10 1581. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

11 1582. Plaintiff Andrew Kavan (for the purposes of this count, "Plaintiff") brings this claim
12 on behalf of himself and the Nebraska State Class against all Defendants.

13 1583. Defendants and Nebraska State Class members are "person[s]" under the Nebraska
14 Consumer Protection Act ("Nebraska CPA"), Neb. Rev. Stat. § 59-1601(1).

15 1584. Defendants' actions as set forth herein occurred in the conduct of trade or commerce
16 as defined under Neb. Rev. Stat. § 59-1601(2).

17 1585. The Nebraska CPA prohibits "unfair or deceptive acts or practices in the conduct of
18 any trade or commerce." Neb. Rev. Stat. § 59-1602. The conduct Defendants engaged in as set
19 forth herein constitutes unfair or deceptive acts or practices.

20 1586. In the course of their business, Defendants concealed and suppressed material facts
21 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
22 emissions testing that were different from production vehicles and/or (b) falsely attesting that
23 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
24 did not.

25 1587. Nebraska State Class members had no way of discerning that Defendants'
26 representations were false and misleading because the Nebraska State Class did not have access to
27 Defendants' emissions certification test vehicles and Defendants' emissions-related hardware was
28 extremely sophisticated technology.

1 1588. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
5 transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 1589. Defendants intentionally and knowingly misrepresented material facts regarding the
8 Class Vehicles with intent to mislead the Nebraska State Class.

9 1590. Defendants knew or should have known that their conduct violated the Nebraska
10 CPA.

11 1591. Defendants owed the Nebraska State Class a duty to disclose the illegality and
12 public health risks, the true nature of the Class Vehicles, because Defendants:

13 A. possessed exclusive knowledge that they were manufacturing, selling, and
14 distributing vehicles throughout the United States that did not perform as advertised;

15 B. intentionally concealed the foregoing from regulators and Nebraska State
16 Class members; and/or

17 C. made incomplete representations about the Class Vehicles' fuel economy
18 and emissions while purposefully withholding material facts that contradicted these
19 representations.

20 1592. Defendants' concealment of the Class Vehicles' true fuel consumption and
21 emissions was material to the Nebraska State Class.

22 1593. Defendants' unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including Plaintiff and the Nebraska State Class,
24 about the true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
25 Defendants' brands, and the true value of the Class Vehicles.

26 1594. Defendants' violations present a continuing risk to the Nebraska State Class as well
27 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
28 public interest.

1 1603. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

4 1604. Defendants also made numerous representations, descriptions, and promises to
5 Nebraska State Class members regarding the performance and emission controls of their vehicles.

6 1605. For example, Defendants included in the warranty booklets for some or all of the
7 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
8 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
9 from defects in material and workmanship which would cause it not to meet those standards.”

10 1606. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
11 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
12 Warranty.”

13 1607. The EPA requires vehicle manufacturers to provide a Performance Warranty with
14 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
15 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
16 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
17 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
18 emission control components are covered for the first eight years or 80,000 miles (whichever
19 comes first). These major emission control components subject to the longer warranty include the
20 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
21 device or computer.

22 1608. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
23 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
24 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
25 Design and Defect Warranty required by the EPA covers repair of emission control or emission
26 related parts, which fail to function or function improperly because of a defect in materials or
27 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
28

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 1609. As manufacturers of light-duty vehicles, Defendants were required to provide these
4 warranties to purchasers or lessees of Class Vehicles.

5 1610. Defendants' warranties formed a basis of the bargain that was reached when
6 consumers purchased or leased Class Vehicles.

7 1611. Despite the existence of warranties, Defendants failed to inform Plaintiff and
8 Nebraska State Class members that the Class Vehicles were defective and intentionally designed
9 and manufactured to emit more pollution and achieve worse fuel economy on the road than what
10 was disclosed to regulators and represented to consumers who purchased or leased them, and
11 Defendants failed to fix the defective emission components free of charge.

12 1612. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 1613. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 1614. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
19 insufficient to make Plaintiff and Nebraska State Class members whole and because Defendants
20 have failed and/or have refused to adequately provide the promised remedies within a reasonable
21 time.

22 1615. Accordingly, recovery by Plaintiff and Nebraska State Class members is not
23 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
24 and workmanship, and they seek all remedies as allowed by law.

25 1616. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
26 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
27 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
28

1 material facts regarding the Class Vehicles. Nebraska State Class members were therefore induced
2 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

3 1617. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
4 through the limited remedy of repairing and correcting Defendants' defect in materials and
5 workmanship as many incidental and consequential damages have already been suffered because of
6 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
7 failure to provide such limited remedy within a reasonable time, and any limitation on Nebraska
8 State Class members' remedies would be insufficient to make them whole.

9 1618. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiff and
10 Nebraska State Class members assert, as additional and/or alternative remedies, the revocation of
11 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
12 currently owned or leased, and for such other incidental and consequential damages as allowed.

13 1619. Defendants were provided reasonable notice of these issues by way of a letter sent
14 by Plaintiffs as well as the regulators' investigations.

15 1620. As a direct and proximate result of Defendants' breach of express warranties,
16 Plaintiff and Nebraska State Class members have been damaged in an amount to be determined at
17 trial.

18 **NEBRASKA COUNT III:**
19 **Breach of Implied Warranty of Merchantability**
20 **Neb. Rev. St. U.C.C. §§ 2-314 and 2A-212**
21 **(On Behalf of the Nebraska State Class)**

22 1621. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1622. Plaintiff Andrew Kavan (for the purposes of this count, "Plaintiff") brings this claim
25 on behalf of himself and the Nebraska State Class against all Defendants.

26 1623. Defendants are and were at all relevant times "merchant[s]" with respect to motor
27 vehicles under Neb. Rev. St. U.C.C. § 2-104(1) and "sellers" of motor vehicles under
28 § 2-103(1)(d).

1 1624. With respect to leases, Defendants are and were at all relevant times “lessors” of
2 motor vehicles under Neb. Rev. St. U.C.C. § 2A-103(1)(p).

3 1625. The Class Vehicles are and were at all relevant times “goods” within the meaning of
4 Neb. Rev. St. U.C.C. §§ 2-105(1) and 2A-103(1)(h).

5 1626. A warranty that the Class Vehicles were in merchantable condition and fit for the
6 ordinary purpose for which vehicles are used is implied by law pursuant to Neb. Rev. St.
7 U.C.C. §§ 2-314 and 2A-212.

8 1627. These Class Vehicles, when sold or leased and at all times thereafter, were
9 materially different from vehicles Defendants submitted for emissions testing and/or did not
10 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
11 fit for the ordinary purpose for which vehicles are used.

12 1628. Defendants were provided reasonable notice of these issues by way of a letter sent
13 by Plaintiffs as well as the regulators’ investigations.

14 1629. As a direct and proximate result of Defendants’ breach of the implied warranty of
15 merchantability, Plaintiff and Nebraska State Class members have been damaged in an amount to
16 be proven at trial.

17 **NEVADA COUNT I:**
18 **Violations of the Nevada Deceptive Trade Practices Act**
19 **Nev. Rev. Stat. § 598.0903 *et seq.***
20 **(On Behalf of the Nevada State Class)**

21 1630. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

22 1631. This count is brought on behalf of the Nevada State Class against all Defendants.

23 1632. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), Nev. Rev. Stat.
24 § 598.0903, *et seq.* prohibits deceptive trade practices. Nev. Rev. Stat. § 598.0915 provides that a
25 person engages in a “deceptive trade practice” if, in the course of business or occupation, the
26 person: “5. Knowingly makes a false representation as to the characteristics, ingredients, uses,
27 benefits, alterations or quantities of goods or services for sale or lease or a false representation as to
28 the sponsorship, approval, status, affiliation or connection of a person therewith”; “7. Represents
that goods or services for sale or lease are of a particular standard, quality or grade, or that such

1 goods are of a particular style or model, if he or she knows or should know that they are of another
2 standard, quality, grade, style or model”; “9. Advertises goods or services with intent not to sell or
3 lease them as advertised”; or “15. Knowingly makes any other false representation in a
4 transaction.”

5 1633. In the course of their business, Defendants concealed and suppressed material facts
6 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
7 emissions testing that were different from production vehicles and/or (b) falsely attesting that
8 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
9 did not.

10 1634. Nevada State Class members had no way of discerning that Defendants’
11 representations were false and misleading because the Nevada State Class did not have access to
12 Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware was
13 extremely sophisticated technology.

14 1635. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
15 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
16 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
17 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
18 transaction involving Class Vehicles has been supplied in accordance with a previous
19 representation when it has not.

20 1636. Defendants intentionally and knowingly misrepresented material facts regarding the
21 Class Vehicles with intent to mislead the Nevada State Class.

22 1637. Defendants knew or should have known that their conduct violated the Nevada
23 DTPA.

24 1638. Defendants owed the Nevada State Class a duty to disclose the illegality and public
25 health risks, the true nature of the Class Vehicles, because Defendants:

26 A. possessed exclusive knowledge that they were manufacturing, selling, and
27 distributing vehicles throughout the United States that did not perform as advertised;

1 B. intentionally concealed the foregoing from regulators and Nevada State
2 Class members; and/or

3 C. made incomplete representations about the Class Vehicles’ fuel economy
4 and emissions while purposefully withholding material facts that contradicted these
5 representations.

6 1639. Defendants’ concealment of the Class Vehicles’ true fuel consumption and
7 emissions was material to the Nevada State Class.

8 1640. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
9 deceive regulators and reasonable consumers, including the Nevada State Class, about the true
10 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants’
11 brands, and the true value of the Class Vehicles.

12 1641. Defendants’ violations present a continuing risk to the Nevada State Class as well as
13 to the general public. Defendants’ unlawful acts and practices complained of herein affect the
14 public interest.

15 1642. Nevada State Class members suffered ascertainable loss and actual damages as a
16 direct and proximate result of Defendants’ misrepresentations and concealment of and failure to
17 disclose material information. Defendants had an ongoing duty to all their customers to refrain
18 from unfair and deceptive practices under the Nevada DTPA. All owners of Class Vehicles
19 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
20 in the course of Defendants’ business.

21 **NEVADA COUNT II:**
22 **Breach of Express Warranty**
23 **N.R.S. §§ 104.2313 and 104A.2210**
24 **(On Behalf of the Nevada State Class)**

25 1643. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
26 fully set forth herein.

27 1644. This count is brought on behalf of the Nevada State Class against all Defendants.

28 1645. Defendants are and were at all relevant times “merchant[s]” with respect to motor
vehicles under N.R.S. § 104.2104(1) and “sellers” of motor vehicles under § 104.2103(1)(c).

1 1646. With respect to leases, Defendants are and were at all relevant times “lessors” of
2 motor vehicles under N.R.S. § 104A.2103(1)(p).

3 1647. The Class Vehicles are and were at all relevant times “goods” within the meaning of
4 N.R.S. §§ 104.2105(1) and 104A.2103(1)(h).

5 1648. In connection with the purchase or lease of each one of its new vehicles, Defendants
6 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
7 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

8 1649. Defendants also made numerous representations, descriptions, and promises to
9 Nevada State Class members regarding the performance and emission controls of their vehicles.

10 1650. For example, Defendants included in the warranty booklets for some or all of the
11 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
12 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
13 from defects in material and workmanship which would cause it not to meet those standards.”

14 1651. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
15 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
16 Warranty.”

17 1652. The EPA requires vehicle manufacturers to provide a Performance Warranty with
18 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
19 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
20 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
21 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
22 emission control components are covered for the first eight years or 80,000 miles (whichever
23 comes first). These major emission control components subject to the longer warranty include the
24 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
25 device or computer.

26 1653. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
27 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
28 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The

1 Design and Defect Warranty required by the EPA covers repair of emission control or emission
2 related parts, which fail to function or function improperly because of a defect in materials or
3 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
4 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
5 comes first.

6 1654. As manufacturers of light-duty vehicles, Defendants were required to provide these
7 warranties to purchasers or lessees of Class Vehicles.

8 1655. Defendants' warranties formed a basis of the bargain that was reached when
9 consumers purchased or leased Class Vehicles.

10 1656. Despite the existence of warranties, Defendants failed to inform Nevada State Class
11 members that the Class Vehicles were defective and intentionally designed and manufactured to
12 emit more pollution and achieve worse fuel economy on the road than what was disclosed to
13 regulators and represented to consumers who purchased or leased them, and Defendants failed to
14 fix the defective emission components free of charge.

15 1657. Defendants breached the express warranty promising to repair and correct
16 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
17 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

18 1658. Affording Defendants a reasonable opportunity to cure their breach of written
19 warranties would be unnecessary and futile here.

20 1659. Furthermore, the limited warranty promising to repair and correct Defendants'
21 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
22 insufficient to make Nevada State Class members whole and because Defendants have failed
23 and/or have refused to adequately provide the promised remedies within a reasonable time.

24 1660. Accordingly, recovery by Nevada State Class members is not restricted to the
25 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
26 and they seek all remedies as allowed by law.

27 1661. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
28 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not

1 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
2 material facts regarding the Class Vehicles. Nevada State Class members were therefore induced to
3 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

4 1662. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
5 through the limited remedy of repairing and correcting Defendants' defect in materials and
6 workmanship as many incidental and consequential damages have already been suffered because of
7 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
8 failure to provide such limited remedy within a reasonable time, and any limitation on Nevada State
9 Class members' remedies would be insufficient to make them whole.

10 1663. Finally, because of Defendants' breach of warranty as set forth herein, Nevada State
11 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the
12 goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or
13 leased, and for such other incidental and consequential damages as allowed.

14 1664. Defendants were provided reasonable notice of these issues by way of a letter sent
15 by Plaintiffs as well as the regulators' investigations.

16 1665. As a direct and proximate result of Defendants' breach of express warranties,
17 Nevada State Class members have been damaged in an amount to be determined at trial.

18 **NEVADA COUNT III:**
19 **Breach of Implied Warranty of Merchantability**
20 **N.R.S. §§ 104.2314 and 104A.2212**
21 **(On Behalf of the Nevada State Class)**

22 1666. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1667. This count is brought on behalf of the Nevada State Class against all Defendants.

25 1668. Defendants are and were at all relevant times "merchant[s]" with respect to motor
26 vehicles under N.R.S. § 104.2104(1) and "sellers" of motor vehicles under § 104.2103(1)(c).

27 1669. With respect to leases, Defendants are and were at all relevant times "lessors" of
28 motor vehicles under N.R.S. § 104A.2103(1)(p).

1 1670. The Class Vehicles are and were at all relevant times “goods” within the meaning of
2 N.R.S. §§ 104.2105(1) and 104A.2103(1)(h).

3 1671. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to N.R.S. §§ 104.2314 and
5 104A.2212.

6 1672. These Class Vehicles, when sold or leased and at all times thereafter, were
7 materially different from vehicles Defendants submitted for emissions testing and/or did not
8 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
9 fit for the ordinary purpose for which vehicles are used.

10 1673. Defendants were provided reasonable notice of these issues by way of a letter sent
11 by Plaintiffs as well as the regulators’ investigations.

12 1674. As a direct and proximate result of Defendants’ breach of the implied warranty of
13 merchantability, Nevada State Class members have been damaged in an amount to be proven at
14 trial.

15 **NEW HAMPSHIRE COUNT I:**
16 **Violations of the New Hampshire Consumer Protection Act**
17 **N.H. Rev. Stat. § 358-A:1 *et seq.***
18 **(On Behalf of the New Hampshire State Class)**

19 1675. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

20 1676. This count is brought on behalf of the New Hampshire State Class against all
21 Defendants.

22 1677. The New Hampshire State Class and Defendants are “persons” under the New
23 Hampshire Consumer Protection Act (“New Hampshire CPA”), N.H. Rev. Stat. § 358-A:1.

24 1678. Defendants’ actions as set forth herein occurred in the conduct of trade or commerce
25 as defined under N.H. Rev. Stat. § 358-A:1.

26 1679. The New Hampshire CPA prohibits a person, in the conduct of any trade or
27 commerce, from using “any unfair or deceptive act or practice,” including “but . . . not limited to,
28 the following: . . . (V) Representing that goods or services have . . . characteristics, . . . uses,
benefits, or quantities that they do not have;” “(VII) Representing that goods or services are of a

1 particular standard, quality, or grade, . . . if they are of another;” and “(IX) Advertising goods or
2 services with intent not to sell them as advertised.” N.H. Rev. Stat. § 358-A:2.

3 1680. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
5 emissions testing that were different from production vehicles and/or (b) falsely attesting that
6 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
7 did not.

8 1681. New Hampshire State Class members had no way of discerning that Defendants’
9 representations were false and misleading because New Hampshire State Class members did not
10 have access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
11 hardware was extremely sophisticated technology.

12 1682. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
13 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
14 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
15 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
16 transaction involving Class Vehicles has been supplied in accordance with a previous
17 representation when it has not.

18 1683. Defendants intentionally and knowingly misrepresented material facts regarding the
19 Class Vehicles with intent to mislead the New Hampshire State Class.

20 1684. Defendants knew or should have known that their conduct violated the New
21 Hampshire CPA.

22 1685. Defendants owed the New Hampshire State Class a duty to disclose the illegality
23 and public health risks, the true nature of the Class Vehicles, because Defendants:

24 A. possessed exclusive knowledge that they were manufacturing, selling, and
25 distributing vehicles throughout the United States that did not perform as advertised;

26 B. intentionally concealed the foregoing from regulators and New Hampshire
27 State Class members; and/or
28

1 C. made incomplete representations about the Class Vehicles’ fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 1686. Defendants’ concealment of the Class Vehicles’ true fuel consumption and
5 emissions was material to the New Hampshire State Class.

6 1687. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including New Hampshire State Class, about the true
8 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants’
9 brands, and the true value of the Class Vehicles.

10 1688. Defendants’ violations present a continuing risk to the New Hampshire State Class
11 as well as to the general public. Defendants’ unlawful acts and practices complained of herein
12 affect the public interest.

13 1689. New Hampshire State Class members suffered ascertainable loss and actual
14 damages as a direct and proximate result of Defendants’ misrepresentations and concealment of
15 and failure to disclose material information. Defendants had an ongoing duty to all their customers
16 to refrain from unfair and deceptive practices under the New Hampshire CPA. All owners of Class
17 Vehicles suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and
18 practices made in the course of Defendants’ business.

19 **NEW HAMPSHIRE COUNT II:**
20 **Breach of Express Warranty**
21 **N.H. Rev. Stat. §§ 382-A:2-313 and 382-A:2A-210**
22 **(On Behalf of the New Hampshire State Class)**

23 1690. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
24 fully set forth herein.

25 1691. This count is brought on behalf of the New Hampshire State Class against all
26 Defendants.

27 1692. Defendants are and were at all relevant times “merchant[s]” with respect to motor
28 vehicles under N.H. Rev. Stat. § 382-A:2-104(1) and “sellers” of motor vehicles under
§ 382-A:2-103(1)(d).

1 1693. With respect to leases, Defendants are and were at all relevant times “lessors” of
2 motor vehicles under N.H. Rev. Stat. § 382-A:2A-103(1)(p).

3 1694. The Class Vehicles are and were at all relevant times “goods” within the meaning of
4 N.H. Rev. Stat. §§ 382-A:2-105(1) and 382-A:2A-103(1)(h).

5 1695. In connection with the purchase or lease of each one of its new vehicles, Defendants
6 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
7 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

8 1696. Defendants also made numerous representations, descriptions, and promises to New
9 Hampshire State Class members regarding the performance and emission controls of their vehicles.

10 1697. For example, Defendants included in the warranty booklets for some or all of the
11 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
12 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
13 from defects in material and workmanship which would cause it not to meet those standards.”

14 1698. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
15 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
16 Warranty.”

17 1699. The EPA requires vehicle manufacturers to provide a Performance Warranty with
18 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
19 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
20 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
21 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
22 emission control components are covered for the first eight years or 80,000 miles (whichever
23 comes first). These major emission control components subject to the longer warranty include the
24 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
25 device or computer.

26 1700. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
27 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
28 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The

1 Design and Defect Warranty required by the EPA covers repair of emission control or emission
2 related parts, which fail to function or function improperly because of a defect in materials or
3 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
4 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
5 comes first.

6 1701. As manufacturers of light-duty vehicles, Defendants were required to provide these
7 warranties to purchasers or lessees of Class Vehicles.

8 1702. Defendants' warranties formed a basis of the bargain that was reached when
9 consumers purchased or leased Class Vehicles.

10 1703. Despite the existence of warranties, Defendants failed to inform New Hampshire
11 State Class members that the Class Vehicles were defective and intentionally designed and
12 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
13 disclosed to regulators and represented to consumers who purchased or leased them, and
14 Defendants failed to fix the defective emission components free of charge.

15 1704. Defendants breached the express warranty promising to repair and correct
16 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
17 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

18 1705. Affording Defendants a reasonable opportunity to cure their breach of written
19 warranties would be unnecessary and futile here.

20 1706. Furthermore, the limited warranty promising to repair and correct Defendants'
21 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
22 insufficient to make New Hampshire State Class members whole and because Defendants have
23 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

24 1707. Accordingly, recovery by the New Hampshire State Class members is not restricted
25 to the limited warranty promising to repair and correct Defendants' defect in materials and
26 workmanship, and they seek all remedies as allowed by law.

27 1708. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
28 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not

1 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
2 material facts regarding the Class Vehicles. New Hampshire State Class members were therefore
3 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

4 1709. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
5 through the limited remedy of repairing and correcting Defendants' defect in materials and
6 workmanship as many incidental and consequential damages have already been suffered because of
7 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
8 failure to provide such limited remedy within a reasonable time, and any limitation on New
9 Hampshire State Class members' remedies would be insufficient to make them whole.

10 1710. Finally, because of Defendants' breach of warranty as set forth herein, New
11 Hampshire State Class members assert, as additional and/or alternative remedies, the revocation of
12 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
13 currently owned or leased, and for such other incidental and consequential damages as allowed.

14 1711. Defendants were provided reasonable notice of these issues by way of a letter sent
15 by Plaintiffs as well as the regulators' investigations.

16 1712. As a direct and proximate result of Defendants' breach of express warranties, New
17 Hampshire State Class members have been damaged in an amount to be determined at trial.

18 **NEW HAMPSHIRE COUNT III:**
19 **Breach of Implied Warranty of Merchantability**
20 **N.H. Rev. Stat. §§ 382-A:2-314 and 382-A:2A-212**
21 **(On Behalf of the New Hampshire State Class)**

22 1713. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
23 forth herein.

24 1714. This count is brought on behalf of the New Hampshire State Class against all
25 Defendants.

26 1715. Defendants are and were at all relevant times "merchant[s]" with respect to motor
27 vehicles under N.H. Rev. Stat. § 382-A:2-104(1) and "sellers" of motor vehicles under
28 § 382-A:2-103(1)(d).

1 1716. With respect to leases, Defendants are and were at all relevant times “lessors” of
2 motor vehicles under N.H. Rev. Stat. § 382-A:2A-103(1)(p).

3 1717. The Class Vehicles are and were at all relevant times “goods” within the meaning of
4 N.H. Rev. Stat. §§ 382-A:2-105(1) and 382-A:2A-103(1)(h).

5 1718. A warranty that the Class Vehicles were in merchantable condition and fit for the
6 ordinary purpose for which vehicles are used is implied by law pursuant to N.H. Rev. Stat.
7 §§ 382-A:2-314 and 382-A:2A-212.

8 1719. These Class Vehicles, when sold or leased and at all times thereafter, were
9 materially different from vehicles Defendants submitted for emissions testing and/or did not
10 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
11 fit for the ordinary purpose for which vehicles are used.

12 1720. Defendants were provided reasonable notice of these issues by way of a letter sent
13 by Plaintiffs as well as the regulators’ investigations.

14 1721. As a direct and proximate result of Defendants’ breach of the implied warranty of
15 merchantability, New Hampshire State Class members have been damaged in an amount to be
16 proven at trial.

17 **NEW JERSEY COUNT I:**
18 **Violations of the New Jersey Consumer Fraud Act**
19 **N.J. Stat. Ann. § 56:8-1 *et seq.***
20 **(On Behalf of the New Jersey State Class)**

21 1722. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
22 set forth herein.

23 1723. Plaintiffs Sander Shady and Owen Williams (for the purposes of this count,
24 “Plaintiffs”) bring this claim on behalf of themselves and the New Jersey State Class against all
25 Defendants.

26 1724. Plaintiffs and New Jersey State Class members and Defendants are “persons” under
27 the New Jersey Consumer Fraud Act (“New Jersey CFA”), N.J. Stat. § 56:8-1(d).
28

1 1725. Defendants engaged in “sales” of “merchandise” within the meaning of N.J. Stat.
2 §56:8-1(c), (e). Defendants’ actions as set forth herein occurred in the conduct of trade or
3 commerce.

4 1726. The New Jersey CFA makes unlawful “[t]he act, use or employment by any person
5 of any unconscionable commercial practice, deception, fraud, false pretense, false promise,
6 misrepresentation, or the knowing concealment, suppression, or omission of any material fact with
7 the intent that others rely upon such concealment, suppression or omission, in connection with the
8 sale or advertisement of any merchandise or real estate, or with the subsequent performance of such
9 person as aforesaid, whether or not any person has in fact been misled, deceived or damaged
10 thereby.” N.J. Stat. § 56:8-2.

11 1727. In the course of their business, Defendants concealed and suppressed material facts
12 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
13 emissions testing that were different from production vehicles and/or (b) falsely attesting that
14 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
15 did not.

16 1728. Plaintiffs and New Jersey State Class members had no way of discerning that
17 Defendants’ representations were false and misleading because Plaintiffs and New Jersey State
18 Class members did not have access to Defendants’ emissions certification test vehicles and
19 Defendants’ emissions-related hardware was extremely sophisticated technology.

20 1729. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
21 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
22 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
23 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
24 transaction involving Class Vehicles has been supplied in accordance with a previous
25 representation when it has not.

26 1730. Defendants intentionally and knowingly misrepresented material facts regarding the
27 Class Vehicles with intent to mislead Plaintiffs and the New Jersey State Class.
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1 1731. Defendants knew or should have known that their conduct violated the New Jersey
2 CFA.

3 1732. Defendants owed Plaintiffs and the New Jersey State Class a duty to disclose the
4 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

5 A. possessed exclusive knowledge that they were manufacturing, selling, and
6 distributing vehicles throughout the United States that did not perform as advertised;

7 B. intentionally concealed the foregoing from regulators, Plaintiffs, and New
8 Jersey State Class members; and/or

9 C. made incomplete representations about the Class Vehicles' fuel economy
10 and emissions while purposefully withholding material facts that contradicted these
11 representations.

12 1733. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
13 consumption and emissions was material to Plaintiffs and the New Jersey State Class.

14 1734. Defendants' unfair or deceptive acts or practices were likely to and did in fact
15 deceive regulators and reasonable consumers, including Plaintiffs and the New Jersey State Class,
16 about the true environmental cleanliness and efficiency of the Class Vehicles, the quality of the
17 Defendants' brands, the devaluing of environmental cleanliness and integrity at Defendant
18 companies, and the true value of the Class Vehicles.

19 1735. Defendants' violations present a continuing risk to Plaintiffs and the New Jersey
20 State Class as well as to the general public. Defendants' unlawful acts and practices complained of
21 herein affect the public interest.

22 1736. Plaintiffs and New Jersey State Class members suffered ascertainable loss and
23 actual damages as a direct and proximate result of Defendants' misrepresentations and concealment
24 of and failure to disclose material information. Defendants had an ongoing duty to all their
25 customers to refrain from unfair and deceptive practices under the New Jersey CFA. All owners
26 and lessees of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and
27 unfair acts and practices made in the course of Defendants' business.
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1 1737. As a direct and proximate result of Defendants’ violations of the New Jersey CFA,
2 Plaintiffs and the New Jersey State Class have suffered injury-in-fact and/or actual damage in an
3 amount to be proven at trial, and seek all just and proper remedies, including, but not limited to,
4 actual and statutory damages, treble damages, an order enjoining Defendants’ deceptive and unfair
5 conduct, costs and reasonable attorneys’ fees under N.J. Stat. § 56:8-19, and all other just and
6 appropriate relief.

7 **NEW JERSEY COUNT II:**
8 **Breach of Express Warranty**
9 **N.J.S. 12A:2-313 and 2A-210**
10 **(On Behalf of the New Jersey State Class)**

11 1738. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
12 fully set forth herein.

13 1739. Plaintiffs Sander Shady and Owen Williams (for the purposes of this count,
14 “Plaintiffs”) bring this claim on behalf of themselves and the New Jersey State Class against all
15 Defendants.

16 1740. Defendants are and were at all relevant times “merchant[s]” with respect to motor
17 vehicles under N.J.S. 12A:2-104(1) and “sellers” of motor vehicles under 2-103(1)(d).

18 1741. With respect to leases, Defendants are and were at all relevant times “lessors” of
19 motor vehicles under N.J.S. 12A:2A-103(1)(p).

20 1742. The Class Vehicles are and were at all relevant times “goods” within the meaning of
21 N.J.S. 12A:2-105(1) and 2A-103(1)(h).

22 1743. In connection with the purchase or lease of each one of its new vehicles, Defendants
23 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
24 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

25 1744. Defendants also made numerous representations, descriptions, and promises to
26 Plaintiffs and New Jersey State Class members regarding the performance and emission controls of
27 their vehicles.

28 1745. For example, Defendants included in the warranty booklets for some or all of the
Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the

1 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
2 from defects in material and workmanship which would cause it not to meet those standards.”

3 1746. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 1747. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
8 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles (whichever
12 comes first). These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 1748. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
17 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
18 Design and Defect Warranty required by the EPA covers repair of emission control or emission
19 related parts, which fail to function or function improperly because of a defect in materials or
20 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
21 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
22 comes first.

23 1749. As manufacturers of light-duty vehicles, Defendants were required to provide these
24 warranties to purchasers or lessees of Class Vehicles.

25 1750. Defendants’ warranties formed a basis of the bargain that was reached when
26 consumers purchased or leased Class Vehicles.

27 1751. Despite the existence of warranties, Defendants failed to inform Plaintiffs and New
28 Jersey State Class members that the Class Vehicles were defective and intentionally designed and

1 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
2 disclosed to regulators and represented to consumers who purchased or leased them, and
3 Defendants failed to fix the defective emission components free of charge.

4 1752. Defendants breached the express warranty promising to repair and correct
5 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
6 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

7 1753. Affording Defendants a reasonable opportunity to cure their breach of written
8 warranties would be unnecessary and futile here.

9 1754. Furthermore, the limited warranty promising to repair and correct Defendants'
10 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
11 insufficient to make Plaintiffs and New Jersey State Class members whole and because Defendants
12 have failed and/or have refused to adequately provide the promised remedies within a reasonable
13 time.

14 1755. Accordingly, recovery by Plaintiffs and New Jersey State Class members is not
15 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
16 and workmanship, and they seek all remedies as allowed by law.

17 1756. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
18 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
19 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
20 material facts regarding the Class Vehicles. Plaintiffs and New Jersey State Class members were
21 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

22 1757. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
23 through the limited remedy of repairing and correcting Defendants' defect in materials and
24 workmanship as many incidental and consequential damages have already been suffered because of
25 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
26 failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiffs'
27 and New Jersey State Class members' remedies would be insufficient to make them whole.
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1 1758. Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiffs and
2 New Jersey State Class members assert, as additional and/or alternative remedies, the revocation of
3 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
4 currently owned or leased, and for such other incidental and consequential damages as allowed.

5 1759. Defendants were provided reasonable notice of these issues by way of a letter sent
6 by Plaintiffs as well as the regulators’ investigations.

7 1760. As a direct and proximate result of Defendants’ breach of express warranties,
8 Plaintiffs and New Jersey State Class members have been damaged in an amount to be determined
9 at trial.

10 **NEW JERSEY COUNT III:**
11 **Breach of Implied Warranty of Merchantability**
12 **N.J.S. 12A:2-314 and 2A-212**
13 **(On Behalf of the New Jersey State Class)**

14 1761. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
15 forth herein.

16 1762. Plaintiffs Sander Shady and Owen Williams (for the purposes of this count,
17 “Plaintiffs”) bring this claim on behalf of themselves and the New Jersey State Class against all
18 Defendants.

19 1763. Defendants are and were at all relevant times “merchant[s]” with respect to motor
20 vehicles under N.J.S. 12A:2-104(1) and “sellers” of motor vehicles under 2-103(1)(d).

21 1764. With respect to leases, Defendants are and were at all relevant times “lessors” of
22 motor vehicles under N.J.S. 12A:2A-103(1)(p).

23 1765. The Class Vehicles are and were at all relevant times “goods” within the meaning of
24 N.J.S. 12A:2-105(1) and 2A-103(1)(h).

25 1766. A warranty that the Class Vehicles were in merchantable condition and fit for the
26 ordinary purpose for which vehicles are used is implied by law pursuant to N.J.S. 12A:2-314 and
27 2A-212.
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1 1767. These Class Vehicles, when sold or leased and at all times thereafter, included
2 inflated and misleading fuel economy values, and were therefore not fit for the ordinary purpose for
3 which vehicles are used.

4 1768. Defendants were provided reasonable notice of these issues by way of a letter sent
5 by Plaintiffs as well as the regulators' investigations.

6 1769. As a direct and proximate result of Defendants' breach of the implied warranty of
7 merchantability, Plaintiffs and New Jersey State Class members have been damaged in an amount
8 to be proven at trial.

9 **NEW MEXICO COUNT I:**
10 **Violations of the New Mexico Unfair Trade Practices Act**
11 **N.M. Stat. Ann. § 57-12-1 *et seq.***
12 **(On Behalf of the New Mexico State Class)**

13 1770. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
14 set forth herein.

15 1771. This count is brought on behalf of the New Mexico State Class against all
16 Defendants.

17 1772. Defendants and New Mexico State Class members are "person[s]" under the New
18 Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. Stat. Ann. § 57-12-2.

19 1773. Defendants' actions as set forth herein occurred in the conduct of trade or commerce
20 as defined under N.M. Stat. Ann. § 57-12-2.

21 1774. The New Mexico UTPA makes unlawful "a false or misleading oral or written
22 statement, visual description or other representation of any kind knowingly made in connection
23 with the sale, lease, rental or loan of goods or services . . . by a person in the regular course of the
24 person's trade or commerce, that may, tends to or does deceive or mislead any person," including
25 but not limited to "failing to state a material fact if doing so deceives or tends to deceive." N.M.
26 Stat. Ann. § 57-12-2(D). Defendants' acts and omissions described herein constitute unfair or
27 deceptive acts or practices under N.M. Stat. Ann. § 57-12-2(D). In addition, Defendants' actions
28 constitute unconscionable actions under N.M. Stat. Ann. § 57-12-2(E), since they took advantage

1 of the lack of knowledge, ability, experience, and capacity of New Mexico State Class members to
2 a grossly unfair degree.

3 1775. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
5 emissions testing that were different from production vehicles and/or (b) falsely attesting that
6 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
7 did not.

8 1776. New Mexico State Class members had no way of discerning that Defendants'
9 representations were false and misleading because New Mexico State Class members did not have
10 access to Defendants' emissions certification test vehicles and Defendants' emissions-related
11 hardware was extremely sophisticated technology.

12 1777. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
13 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
14 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
15 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
16 transaction involving Class Vehicles has been supplied in accordance with a previous
17 representation when it has not.

18 1778. Defendants intentionally and knowingly misrepresented material facts regarding the
19 Class Vehicles with intent to mislead the New Mexico State Class.

20 1779. Defendants knew or should have known that their conduct violated the New Mexico
21 UTPA.

22 1780. Defendants owed the New Mexico State Class a duty to disclose the illegality and
23 public health risks, the true nature of the Class Vehicles, because Defendants:

24 A. possessed exclusive knowledge that they were manufacturing, selling, and
25 distributing vehicles throughout the United States that did not perform as advertised;

26 B. intentionally concealed the foregoing from regulators and New Mexico State
27 Class members; and/or
28

1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 1781. Defendants' concealment of the Class Vehicles' true fuel consumption and
5 emissions was material to the New Mexico State Class.

6 1782. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the New Mexico State Class, about the true
8 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
9 brands, and the true value of the Class Vehicles.

10 1783. Defendants' violations present a continuing risk to the New Mexico State Class as
11 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
12 the public interest.

13 1784. New Mexico State Class members suffered ascertainable loss and actual damages as
14 a direct and proximate result of Defendants' misrepresentations and concealment of and failure to
15 disclose material information. Defendants had an ongoing duty to all their customers to refrain
16 from unfair and deceptive practices under the New Mexico UTPA. All owners of Class Vehicles
17 suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made
18 in the course of Defendants' business.

19 1785. As a direct and proximate result of Defendants' violations of the New Mexico
20 UTPA, New Mexico State Class members have suffered injury-in-fact and/or actual damage.

21 1786. Because Defendants' unconscionable, willful conduct caused actual harm to New
22 Mexico State Class members, the New Mexico State Class seeks recovery of actual damages or
23 \$100, whichever is greater, discretionary treble damages, punitive damages, and reasonable
24 attorneys' fees and costs, as well as all other proper and just relief available under N.M. Stat. Ann.
25 § 57-12-10.

26 1787. New Mexico State Class members also seek punitive damages against Defendants
27 because Defendants' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith.
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**NEW MEXICO COUNT II:
Breach of Express Warranty
N.M. Stat. §§ 55-2-313 and 55-2A-210
(On Behalf of the New Mexico State Class)**

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3 1788. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 1789. This count is brought on behalf of the New Mexico State Class against all
6 Defendants.

7 1790. Defendants are and were at all relevant times “merchant[s]” with respect to motor
8 vehicles under N.M. Stat. § 55-2-104(1) and “sellers” of motor vehicles under § 55-2-103(1)(d).

9 1791. With respect to leases, Defendants are and were at all relevant times “lessors” of
10 motor vehicles under N.M. Stat. § 55-2A-103(1)(p).

11 1792. The Class Vehicles are and were at all relevant times “goods” within the meaning of
12 N.M. Stat. §§ 55-2-105(1) and 55-2A-103(1)(h).

13 1793. In connection with the purchase or lease of each one of its new vehicles, Defendants
14 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
15 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

16 1794. Defendants also made numerous representations, descriptions, and promises to New
17 Mexico State Class members regarding the performance and emission controls of their vehicles.

18 1795. For example, Defendants included in the warranty booklets for some or all of the
19 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
20 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
21 from defects in material and workmanship which would cause it not to meet those standards.”

22 1796. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
23 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
24 Warranty.”

25 1797. The EPA requires vehicle manufacturers to provide a Performance Warranty with
26 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
27 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
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1 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
2 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
3 emission control components are covered for the first eight years or 80,000 miles (whichever
4 comes first). These major emission control components subject to the longer warranty include the
5 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
6 device or computer.

7 1798. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
8 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
9 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
10 Design and Defect Warranty required by the EPA covers repair of emission control or emission
11 related parts, which fail to function or function improperly because of a defect in materials or
12 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
13 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
14 comes first.

15 1799. As manufacturers of light-duty vehicles, Defendants were required to provide these
16 warranties to purchasers or lessees of Class Vehicles.

17 1800. Defendants' warranties formed a basis of the bargain that was reached when
18 consumers purchased or leased Class Vehicles.

19 1801. Despite the existence of warranties, Defendants failed to inform New Mexico State
20 Class members that the Class Vehicles were defective and intentionally designed and manufactured
21 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
22 regulators and represented to consumers who purchased or leased them, and Defendants failed to
23 fix the defective emission components free of charge.

24 1802. Defendants breached the express warranty promising to repair and correct
25 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
26 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

27 1803. Affording Defendants a reasonable opportunity to cure their breach of written
28 warranties would be unnecessary and futile here.

1 1804. Furthermore, the limited warranty promising to repair and correct Defendants’
2 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
3 insufficient to make New Mexico State Class members whole and because Defendants have failed
4 and/or have refused to adequately provide the promised remedies within a reasonable time.

5 1805. Accordingly, recovery by New Mexico State Class members is not restricted to the
6 limited warranty promising to repair and correct Defendants’ defect in materials and workmanship,
7 and they seek all remedies as allowed by law.

8 1806. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
9 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
10 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
11 material facts regarding the Class Vehicles. New Mexico State Class members were therefore
12 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

13 1807. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
14 through the limited remedy of repairing and correcting Defendants’ defect in materials and
15 workmanship as many incidental and consequential damages have already been suffered because of
16 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
17 failure to provide such limited remedy within a reasonable time, and any limitation on New Mexico
18 State Class members’ remedies would be insufficient to make them whole.

19 1808. Finally, because of Defendants’ breach of warranty as set forth herein, New Mexico
20 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
21 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
22 owned or leased, and for such other incidental and consequential damages as allowed.

23 1809. Defendants were provided reasonable notice of these issues by way of a letter sent
24 by Plaintiffs as well as the regulators’ investigations.

25 1810. As a direct and proximate result of Defendants’ breach of express warranties, New
26 Mexico State Class members have been damaged in an amount to be determined at trial.

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**NEW MEXICO COUNT III:
Breach of Implied Warranty of Merchantability
N.M. Stat. §§ 55-2-314 and 55-2A-212
(On Behalf of the New Mexico State Class)**

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4 1811. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
5 forth herein.

6 1812. This count is brought on behalf of the New Mexico State Class against all
7 Defendants.

8 1813. Defendants are and were at all relevant times “merchant[s]” with respect to motor
9 vehicles under N.M. Stat. § 55-2-104(1) and “sellers” of motor vehicles under § 55-2-103(1)(d).

10 1814. With respect to leases, Defendants are and were at all relevant times “lessors” of
11 motor vehicles under N.M. Stat. § 55-2A-103(1)(p).

12 1815. The Class Vehicles are and were at all relevant times “goods” within the meaning of
13 N.M. Stat. §§ 55-2-105(1) and 55-2A-103(1)(h).

14 1816. A warranty that the Class Vehicles were in merchantable condition and fit for the
15 ordinary purpose for which vehicles are used is implied by law pursuant to N.M. Stat. §§ 55-2-314
16 and 55-2A-212.

17 1817. These Class Vehicles, when sold or leased and at all times thereafter, were
18 materially different from vehicles Defendants submitted for emissions testing and/or did not
19 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
20 fit for the ordinary purpose for which vehicles are used.

21 1818. Defendants were provided reasonable notice of these issues by way of a letter sent
22 by Plaintiffs as well as the regulators’ investigations.

23 1819. As a direct and proximate result of Defendants’ breach of the implied warranty of
24 merchantability, New Mexico State Class members have been damaged in an amount to be proven
25 at trial.

**NEW YORK COUNT I:
Violations of the New York General Business Law § 349
N.Y. Gen. Bus. Law § 349
(On Behalf of the New York State Class)**

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1820. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.

1821. Plaintiffs Frank Cohen, Peter Menger, and Orville Taylor (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the New York State Class against all Defendants.

1822. The New York State Class members and Defendants are “persons” under N.Y. Gen. Bus. Law § 349(h), the New York Deceptive Acts and Practices Act (“NY DAPA”).

1823. Defendants’ actions as set forth herein occurred in the conduct of trade or commerce under the NY DAPA.

1824. The NY DAPA makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce.” N.Y. Gen. Bus. Law § 349. Defendants’ conduct, as set forth herein, constitutes deceptive acts or practices under this section.

1825. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for emissions testing that were different from production vehicles and/or (b) falsely attesting that certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact did not.

1826. New York State Class members had no way of discerning that Defendants’ representations were false and misleading because New York State Class members did not have access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware was extremely sophisticated technology.

1827. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a

1 transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 1828. Defendants intentionally and knowingly misrepresented material facts regarding the
4 Class Vehicles with intent to mislead the New York State Class.

5 1829. Defendants knew or should have known that their conduct violated the NY DAPA.

6 1830. Defendants owed the New York State Class a duty to disclose the illegality and
7 public health risks, the true nature of the Class Vehicles, because Defendants:

8 A. possessed exclusive knowledge that they were manufacturing, selling, and
9 distributing vehicles throughout the United States that did not perform as advertised;

10 B. intentionally concealed the foregoing from regulators and New York State
11 Class members; and/or

12 C. made incomplete representations about the Class Vehicles' fuel economy
13 and emissions while purposefully withholding material facts that contradicted these
14 representations.

15 1831. Defendants' concealment of the true characteristics of the Class Vehicles' true fuel
16 consumption and emissions was material to the New York State Class.

17 1832. Defendants' unfair or deceptive acts or practices were likely to and did in fact
18 deceive regulators and reasonable consumers, including Plaintiffs and the New York State Class,
19 about the true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
20 Defendants' brands, and the true value of the Class Vehicles.

21 1833. Defendants' violations present a continuing risk to Plaintiffs and the New York
22 State Class as well as to the general public. Defendants' unlawful acts and practices complained of
23 herein affect the public interest.

24 1834. Plaintiffs and New York State Class members suffered ascertainable loss and actual
25 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
26 and failure to disclose material information. Defendants had an ongoing duty to all their customers
27 to refrain from unfair and deceptive practices under the NY DAPA. All owners of Class Vehicles
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1 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
2 in the course of Defendants’ business.

3 1835. As a direct and proximate result of Defendants’ violations of the NY DAPA, New
4 York State Class members have suffered injury-in-fact and/or actual damage.

5 1836. As a result of the foregoing willful, knowing, and wrongful conduct of Defendants,
6 Plaintiffs and New York State Class members have been damaged in an amount to be proven at
7 trial, and seek all just and proper remedies, including but not limited to actual damages or \$50,
8 whichever is greater, treble damages up to \$1,000, punitive damages to the extent available under
9 the law, reasonable attorneys’ fees and costs, an order enjoining Defendants’ deceptive and unfair
10 conduct, and all other just and appropriate relief available under the NY DAPA.

11 **NEW YORK COUNT II:**
12 **Violations of the New York General Business Law § 350**
13 **N.Y. Gen. Bus. Law § 350**
14 **(On Behalf of the New York State Class)**

15 1837. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
16 set forth herein.

17 1838. Plaintiffs Frank Cohen, Peter Menger, and Orville Taylor (for the purposes of this
18 count, “Plaintiffs”) bring this claim on behalf of themselves and the New York State Class against
19 all Defendants.

20 1839. Defendants were engaged in the “conduct of business, trade or commerce,” within
21 the meaning of N.Y. Gen. Bus. Law § 350, the New York False Advertising Act (“NY FAA”)

22 1840. The NY FAA makes unlawful “[f]alse advertising in the conduct of any business,
23 trade or commerce.” N.Y. Gen. Bus. Law § 350. False advertising includes “advertising, including
24 labeling, of a commodity . . . if such advertising is misleading in a material respect,” taking into
25 account “the extent to which the advertising fails to reveal facts material in light of . . .
26 representations [made] with respect to the commodity . . .” N.Y. Gen. Bus. Law § 350-a.

27 1841. Defendants caused to be made or disseminated through New York, through
28 advertising, marketing, and other publications, statements and omissions that were untrue or

1 misleading, and that were known by Defendants, or that through the exercise of reasonable care
2 should have been known by Defendants, to be untrue and misleading to the New York State Class.

3 1842. Defendants made numerous material misrepresentations and omissions of fact with
4 intent to mislead and deceive concerning the Class Vehicles, particularly concerning the illegality,
5 efficacy and functioning of the emissions systems on the Class Vehicles. Specifically, Defendants
6 intentionally concealed and suppressed material facts concerning the legality and quality of the
7 Class Vehicles to intentionally and grossly defraud and mislead the New York State Class
8 concerning the true emissions produced by the Class Vehicles.

9 1843. The misrepresentations and omissions regarding fuel economy and emissions set
10 forth above were material and likely to deceive a reasonable consumer.

11 1844. Defendants intentionally and knowingly misrepresented material facts regarding the
12 Class Vehicles with intent to mislead the New York State Class.

13 1845. Defendants' false advertising was likely to and did in fact deceive regulators and
14 reasonable consumers, including the New York State Class, about the illegality and true
15 characteristics of the Class Vehicles, the quality of Defendants brand and the true value of the Class
16 Vehicles.

17 1846. Defendants' violations of the NY FAA present a continuing risk to New York State
18 Class members and to the general public. Defendants' deceptive acts and practices affect the public
19 interest.

20 1847. The Class Vehicles do not perform as advertised and are not compliant with EPA
21 regulations, making them far less valuable than advertised.

22 1848. New York State Class members have suffered injury-in-fact and/or actual damages
23 and ascertainable loss as a direct and proximate result of the Defendant's false advertising in
24 violation of the NY FAA.

25 1849. The New York State Class seeks monetary relief against Defendants measured as
26 the greater of (a) actual damages in an amount to be determined at trial, and (b) statutory damages
27 in the amount of \$500 each for New York State Class members. Because Defendants' conduct was
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1 committed willingly and knowingly, New York State Class members are entitled to recover three
2 times actual damages, up to \$10,000.

3 1850. The New York State Class also seeks an order enjoining Defendants' false
4 advertising, attorneys' fees, and any other just and proper relief under N.Y. Gen. Bus. Law § 350.

5 **NEW YORK COUNT III:**
6 **Breach of Express Warranty**
7 **N.Y. U.C.C. Law §§ 2-313 and 2A-210**
8 **(On Behalf of the New York State Class)**

9 1851. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
10 fully set forth herein.

11 1852. Plaintiffs Frank Cohen, Peter Menger, and Orville Taylor (for the purposes of this
12 count, "Plaintiffs") bring this claim on behalf of themselves and the New York State Class against
13 all Defendants.

14 1853. Defendants are and were at all relevant times "merchant[s]" with respect to motor
15 vehicles under N.Y. UCC Law § 2-104(1) and "sellers" of motor vehicles under § 2-103(1)(d).

16 1854. With respect to leases, Defendants are and were at all relevant times "lessors" of
17 motor vehicles under N.Y. UCC Law § 2A-103(1)(p).

18 1855. The Class Vehicles are and were at all relevant times "goods" within the meaning of
19 N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).

20 1856. In connection with the purchase or lease of each one of its new vehicles, Defendants
21 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
22 warranty exists to repair the vehicle "if it fails to function properly as designed during normal use."

23 1857. Defendants also made numerous representations, descriptions, and promises to New
24 York State Class members regarding the performance and emission controls of their vehicles.

25 1858. For example, Defendants included in the warranty booklets for some or all of the
26 Class Vehicles the warranty that its vehicles were "designed, built, and equipped to conform at the
27 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
28 from defects in material and workmanship which would cause it not to meet those standards."

1 1859. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 1860. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 1861. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 1862. As manufacturers of light-duty vehicles, Defendants were required to provide these
22 warranties to purchasers or lessees of Class Vehicles.

23 1863. Defendants’ warranties formed a basis of the bargain that was reached when
24 consumers purchased or leased Class Vehicles.

25 1864. Despite the existence of warranties, Defendants failed to inform New York State
26 Class members that the Class Vehicles were defective and intentionally designed and manufactured
27 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
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1 regulators and represented to consumers who purchased or leased them, and Defendants failed to
2 fix the defective emission components free of charge.

3 1865. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 1866. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 1867. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
10 insufficient to make New York State Class members whole and because Defendants have failed
11 and/or have refused to adequately provide the promised remedies within a reasonable time.

12 1868. Accordingly, recovery by New York State Class members is not restricted to the
13 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
14 and they seek all remedies as allowed by law.

15 1869. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
16 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
17 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
18 material facts regarding the Class Vehicles. New York State Class members were therefore induced
19 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

20 1870. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
21 through the limited remedy of repairing and correcting Defendants' defect in materials and
22 workmanship as many incidental and consequential damages have already been suffered because of
23 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
24 failure to provide such limited remedy within a reasonable time, and any limitation on New York
25 State Class members' remedies would be insufficient to make them whole.

26 1871. Finally, because of Defendants' breach of warranty as set forth herein, New York
27 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
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1 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
2 owned or leased, and for such other incidental and consequential damages as allowed.

3 1872. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 1873. As a direct and proximate result of Defendants' breach of express warranties, New
6 York State Class members have been damaged in an amount to be determined at trial.

7 **NEW YORK COUNTY IV:**
8 **Breach of Implied Warranty of Merchantability**
9 **N.Y. U.C.C. Law §§ 2-314 and 2A-212**
10 **(On Behalf of the New York State Class)**

11 1874. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1875. Plaintiffs Frank Cohen, Peter Menger, and Orville Taylor (for the purposes of this
14 count, "Plaintiffs") bring this claim on behalf of themselves and the New York State Class against
15 all Defendants.

16 1876. Defendants are and were at all relevant times "merchant[s]" with respect to motor
17 vehicles under N.Y. UCC Law § 2-104(1) and "sellers" of motor vehicles under § 2-103(1)(d).

18 1877. With respect to leases, Defendants are and were at all relevant times "lessors" of
19 motor vehicles under N.Y. UCC Law § 2A-103(1)(p).

20 1878. The Class Vehicles are and were at all relevant times "goods" within the meaning of
21 N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).

22 1879. A warranty that the Class Vehicles were in merchantable condition and fit for the
23 ordinary purpose for which vehicles are used is implied by law pursuant to N.Y. UCC Law
24 §§ 2-314 and 2A-212.

25 1880. These Class Vehicles, when sold or leased and at all times thereafter, were
26 materially different from vehicles Defendants submitted for emissions testing and/or did not
27 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
28 fit for the ordinary purpose for which vehicles are used.

1 1881. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators' investigations.

3 1882. As a direct and proximate result of Defendants' breach of the implied warranty of
4 merchantability, New York State Class members have been damaged in an amount to be proven at
5 trial.

6 **NORTH CAROLINA COUNT I:**
7 **Violations of the North Carolina Unfair and Deceptive Acts and Practices Act**
8 **N.C. Gen. Stat. § 75-1.1 *et seq.***
9 **(On Behalf of the North Carolina State Class)**

10 1883. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

11 1884. Plaintiffs Dyana Spiess and John Vorisek (for the purposes of this count,
12 "Plaintiffs") bring this claim on behalf of themselves and the North Carolina State Class against all
13 Defendants.

14 1885. Plaintiffs and North Carolina State Class members are persons under the North
15 Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*
16 ("NCUDTPA").

17 1886. Defendants' acts and practices complained of herein were performed in the course
18 of Defendants' trade or business and thus occurred in or affected "commerce," as defined in N.C.
19 Gen. Stat. § 75-1.1(b).

20 1887. The NCUDTPA makes unlawful "[u]nfair methods of competition in or affecting
21 commerce, and unfair or deceptive acts or practices in or affecting commerce[.]" The NCUDTPA
22 provides a private right of action for any person injured "by reason of any act or thing done by any
23 other person, firm or corporation in violation of" the NCUDTPA. N.C. Gen. Stat. § 75-16.

24 1888. In the course of their business, Defendants concealed and suppressed material facts
25 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
26 emissions testing that were different from production vehicles and/or (b) falsely attesting that
27 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
28 did not.

1 1889. Plaintiffs and North Carolina State Class members had no way of discerning that
2 Defendants' representations were false and misleading because Plaintiffs and North Carolina State
3 Class members did not have access to Defendants' emissions certification test vehicles and
4 Defendants' emissions-related hardware was extremely sophisticated technology.

5 1890. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
6 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
7 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
8 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
9 transaction involving Class Vehicles has been supplied in accordance with a previous
10 representation when it has not.

11 1891. Defendants intentionally and knowingly misrepresented material facts regarding the
12 Class Vehicles with intent to mislead Plaintiffs and the North Carolina State Class.

13 1892. Defendants knew or should have known that their conduct violated the NCUDTPA.

14 1893. Defendants owed to Plaintiffs and the North Carolina State Class a duty to disclose
15 the illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

16 A. possessed exclusive knowledge that they were manufacturing, selling, and
17 distributing vehicles throughout the United States that did not perform as advertised;

18 B. intentionally concealed the foregoing from regulators, Plaintiffs, and North
19 Carolina State Class members; and/or

20 C. made incomplete representations about the Class Vehicles' fuel economy
21 and emissions while purposefully withholding material facts from Plaintiffs and the North
22 Carolina State Class that contradicted these representations.

23 1894. Defendants' concealment of the Class Vehicles' true fuel consumption and
24 emissions were material to Plaintiffs and the North Carolina State Class.

25 1895. Defendants' unfair or deceptive acts or practices were likely to and did in fact
26 deceive regulators and reasonable consumers, including Plaintiffs and the North Carolina State
27 Class, about the true environmental cleanliness and efficiency of the Class Vehicles, the quality of
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1 the Defendants’ brands, the devaluing of environmental cleanliness and integrity at Defendant
2 companies, and the true value of the Class Vehicles.

3 1896. Defendants’ violations present a continuing risk to Plaintiffs and the North Carolina
4 State Class, as well as to the general public. Defendants’ unlawful acts and practices complained of
5 herein affect the public interest.

6 1897. Plaintiffs and North Carolina State Class members suffered ascertainable loss and
7 actual damages as a direct and proximate result of Defendants’ misrepresentations and concealment
8 of and failure to disclose material information. Defendants had an ongoing duty to all their
9 customers to refrain from unfair and deceptive practices under the NCUDETPA. All owners of Class
10 Vehicles suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and
11 practices made in the course of Defendants’ business.

12 1898. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs and the
13 North Carolina State Class has been damaged in an amount to be proven at trial, and seek all just
14 and proper remedies, including but not limited to treble damages, an order enjoining Defendants’
15 deceptive and unfair conduct, court costs and reasonable attorneys’ fees, and any other just and
16 proper relief available under N.C. Gen. Stat. § 75-16.

17 **NORTH CAROLINA COUNT II:**
18 **Breach of Express Warranty**
19 **N.C.G.S.A. §§ 25-2-313 and 252A-210**
20 **(On Behalf of the North Carolina State Class)**

21 1899. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
22 fully set forth herein.

23 1900. Plaintiffs Dyana Spiess and John Vorisek (for the purposes of this count,
24 “Plaintiffs”) bring this claim on behalf of themselves and the North Carolina State Class against all
25 Defendants.

26 1901. Defendants are and were at all relevant times “merchant[s]” with respect to motor
27 vehicles under N.C.G.S.A. § 25-2-104(1) and “sellers” of motor vehicles under § 25-2-103(1)(d).

28 1902. With respect to leases, Defendants are and were at all relevant times “lessors” of
motor vehicles under N.C.G.S.A. § 25-2A-103(1)(p).

1 1903. The Class Vehicles are and were at all relevant times “goods” within the meaning of
2 N.C.G.S.A. § 25-2-105(1) and N.C.G.S.A. § 25-2A-103(1)(h).

3 1904. In connection with the purchase or lease of each one of its new vehicles, Defendants
4 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
5 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

6 1905. Defendants also made numerous representations, descriptions, and promises to
7 Plaintiffs and North Carolina State Class members regarding the performance and emission
8 controls of their vehicles.

9 1906. For example, Defendants included in the warranty booklets for some or all of the
10 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
11 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
12 from defects in material and workmanship which would cause it not to meet those standards.”

13 1907. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
14 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
15 Warranty.”

16 1908. The EPA requires vehicle manufacturers to provide a Performance Warranty with
17 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
18 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
19 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
20 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
21 emission control components are covered for the first eight years or 80,000 miles (whichever
22 comes first). These major emission control components subject to the longer warranty include the
23 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
24 device or computer.

25 1909. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
26 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
27 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
28 Design and Defect Warranty required by the EPA covers repair of emission control or emission

1 related parts, which fail to function or function improperly because of a defect in materials or
2 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
3 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
4 comes first.

5 1910. As manufacturers of light-duty vehicles, Defendants were required to provide these
6 warranties to purchasers or lessees of Class Vehicles.

7 1911. Defendants' warranties formed a basis of the bargain that was reached when
8 consumers purchased or leased Class Vehicles.

9 1912. Despite the existence of warranties, Defendants failed to inform Plaintiffs and North
10 Carolina State Class members that the Class Vehicles were defective and intentionally designed
11 and manufactured to emit more pollution and achieve worse fuel economy on the road than what
12 was disclosed to regulators and represented to consumers who purchased or leased them, and
13 Defendants failed to fix the defective emission components free of charge.

14 1913. Defendants breached the express warranty promising to repair and correct
15 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
16 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

17 1914. Affording Defendants a reasonable opportunity to cure their breach of written
18 warranties would be unnecessary and futile here.

19 1915. Furthermore, the limited warranty promising to repair and correct Defendants'
20 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
21 insufficient to make Plaintiffs and North Carolina State Class members whole and because
22 Defendants have failed and/or have refused to adequately provide the promised remedies within a
23 reasonable time.

24 1916. Accordingly, recovery by Plaintiffs and North Carolina State Class members is not
25 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
26 and workmanship, and they seek all remedies as allowed by law.

27 1917. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
28 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not

1 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
2 material facts regarding the Class Vehicles. Plaintiffs and North Carolina State Class members
3 were therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent
4 pretenses.

5 1918. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
6 through the limited remedy of repairing and correcting Defendants' defect in materials and
7 workmanship as many incidental and consequential damages have already been suffered because of
8 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
9 failure to provide such limited remedy within a reasonable time, and any limitation Plaintiffs' and
10 on North Carolina State Class members' remedies would be insufficient to make them whole.

11 1919. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiffs and
12 North Carolina State Class members assert, as additional and/or alternative remedies, the
13 revocation of acceptance of the goods and the return to them of the purchase or lease price of all
14 Class Vehicles currently owned or leased, and for such other incidental and consequential damages
15 as allowed.

16 1920. Defendants were provided reasonable notice of these issues by way of a letter sent
17 by Plaintiffs as well as the regulators' investigations.

18 1921. As a direct and proximate result of Defendants' breach of express warranties,
19 Plaintiffs and North Carolina State Class members have been damaged in an amount to be
20 determined at trial.

21 **NORTH CAROLINA COUNT III:**
22 **Breach of Implied Warranty of Merchantability**
23 **N.C.G.S.A. §§ 25-2-314 and 252A-212**
24 **(On Behalf of the North Carolina State Class)**

25 1922. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
26 forth herein.

27 1923. Plaintiffs Dyana Spiess and John Vorisek (for the purposes of this count,
28 "Plaintiffs") bring this claim on behalf of themselves and the North Carolina State Class against all
Defendants.

1 1924. Defendants are and were at all relevant times “merchant[s]” with respect to motor
2 vehicles under N.C.G.S.A. § 25-2-104(1) and “sellers” of motor vehicles under § 25-2-103(1)(d).

3 1925. With respect to leases, Defendants are and were at all relevant times “lessors” of
4 motor vehicles under N.C.G.S.A. § 25-2A-103(1)(p).

5 1926. The Class Vehicles are and were at all relevant times “goods” within the meaning of
6 N.C.G.S.A. § 25-2-105(1) and N.C.G.S.A. § 25-2A-103(1)(h).

7 1927. A warranty that the Class Vehicles were in merchantable condition and fit for the
8 ordinary purpose for which vehicles are used is implied by law pursuant to N.C.G.S.A. § 25-2-314
9 and N.C.G.S.A. § 25-2A-212.

10 1928. These Class Vehicles, when sold or leased and at all times thereafter, were
11 materially different from vehicles Defendants submitted for emissions testing and/or did not
12 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
13 fit for the ordinary purpose for which vehicles are used.

14 1929. Defendants were provided reasonable notice of these issues by way of a letter sent
15 by Plaintiffs as well as the regulators’ investigations.

16 1930. As a direct and proximate result of Defendants’ breach of the implied warranty of
17 merchantability, Plaintiffs and North Carolina State Class members have been damaged in an
18 amount to be proven at trial.

19 **NORTH DAKOTA COUNT I:**
20 **Violations of the North Dakota Consumer Fraud Act**
21 **N.D. Cent. Code § 51-15-02**
22 **(On Behalf of the North Dakota State Class)**

23 1931. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

24 1932. This count is brought on behalf of the North Dakota State Class against all
25 Defendants.

26 1933. North Dakota State Class members and Defendants are “persons” within the
27 meaning of N.D. Cent. Code § 51-15-02(4).

28 1934. Defendants engaged in the “sale” of “merchandise” within the meaning of N.D.
Cent Code § 51-15-02(3), (5).

1 1935. The North Dakota Consumer Fraud Act (“North Dakota CFA”) makes unlawful
2 “[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false pretense,
3 false promise, or misrepresentation, with the intent that others rely thereon in connection with the
4 sale or advertisement of any merchandise” N.D. Cent. Code § 51-15-02. As set forth above and
5 below, Defendants committed deceptive acts or practices, with the intent that North Dakota State
6 Class members rely thereon in connection with their purchase or lease of the Class Vehicles.

7 1936. In the course of their business, Defendants concealed and suppressed material facts
8 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
9 emissions testing that were different from production vehicles and/or (b) falsely attesting that
10 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
11 did not.

12 1937. North Dakota State Class members had no way of discerning that Defendants’
13 representations were false and misleading because North Dakota State Class members did not have
14 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
15 hardware was extremely sophisticated technology.

16 1938. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
17 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
18 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
19 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
20 transaction involving Class Vehicles has been supplied in accordance with a previous
21 representation when it has not.

22 1939. Defendants intentionally and knowingly misrepresented material facts regarding the
23 Class Vehicles with intent to mislead the North Dakota State Class.

24 1940. Defendants knew or should have known that their conduct violated the North
25 Dakota CFA.

26 1941. Defendants owed the North Dakota State Class a duty to disclose the illegality and
27 public health risks, the true nature of the Class Vehicles, because Defendants:
28

1 A. possessed exclusive knowledge that they were manufacturing, selling, and
2 distributing vehicles throughout the United States that did not perform as advertised;

3 B. intentionally concealed the foregoing from regulators and North Dakota
4 State Class members; and/or

5 C. made incomplete representations about the Class Vehicles' fuel economy
6 and emissions while purposefully withholding material facts that contradicted these
7 representations.

8 1942. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
9 consumption and emissions was material to the North Dakota State Class.

10 1943. Defendants' unfair or deceptive acts or practices were likely to and did in fact
11 deceive regulators and reasonable consumers, including the North Dakota State Class, about the
12 true environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
13 brands, and the true value of the Class Vehicles.

14 1944. Defendants' violations present a continuing risk to the North Dakota State Class as
15 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
16 the public interest.

17 1945. North Dakota State Class members suffered ascertainable loss and actual damages
18 as a direct and proximate result of Defendants' misrepresentations and concealment of and failure
19 to disclose material information. Defendants had an ongoing duty to all their customers to refrain
20 from unfair and deceptive practices under the North Dakota CFA. All owners of Class Vehicles
21 suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made
22 in the course of Defendants' business.

23 1946. As a direct and proximate result of Defendants' violations of the North Dakota CFA,
24 North Dakota State Class members have suffered injury-in-fact and/or actual damage.

25 1947. North Dakota State Class members seek punitive damages against Defendants
26 because Defendants' conduct was egregious. Defendants' egregious conduct warrants punitive
27 damages.

28

1 1948. Further, Defendants knowingly committed the conduct described above, and thus,
2 under N.D. Cent. Code § 51-15-09, Defendants are liable to the North Dakota State Class for treble
3 damages in amounts to be proven at trial, as well as attorneys’ fees, costs, and disbursements.
4 Plaintiffs further seek an order enjoining Defendants’ unfair and/or deceptive acts or practices, and
5 other just and proper available relief under the North Dakota CFA.

6 **NORTH DAKOTA COUNT II:**
7 **Breach of Express Warranty**
8 **N.D. Cent. Code §§ 41-02-30 and 41-02.1-19**
9 **(On Behalf of the North Dakota State Class)**

10 1949. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
11 fully set forth herein.

12 1950. This count is brought on behalf of the North Dakota State Class against all
13 Defendants.

14 1951. Defendants are and were at all relevant times “merchant[s]” with respect to motor
15 vehicles under N.D. Cent. Code § 41-02.04(3) and “sellers” of motor vehicles under
16 § 41-02-03(1)(d).

17 1952. With respect to leases, Defendants are and were at all relevant times “lessors” of
18 motor vehicles under N.D. Cent. Code § 41-02.1-03(1)(p).

19 1953. The Class Vehicles are and were at all relevant times “goods” within the meaning of
20 N.D. Cent. Code § 41-02-05(2) and N.D. Cent. Code § 41-02.1-03(1)(h).

21 1954. In connection with the purchase or lease of each one of its new vehicles, Defendants
22 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
23 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

24 1955. Defendants also made numerous representations, descriptions, and promises to
25 North Dakota State Class members regarding the performance and emission controls of their
26 vehicles.

27 1956. For example, Defendants included in the warranty booklets for some or all of the
28 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the

1 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
2 from defects in material and workmanship which would cause it not to meet those standards.”

3 1957. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
4 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
5 Warranty.”

6 1958. The EPA requires vehicle manufacturers to provide a Performance Warranty with
7 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
8 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
9 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
10 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
11 emission control components are covered for the first eight years or 80,000 miles (whichever
12 comes first). These major emission control components subject to the longer warranty include the
13 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
14 device or computer.

15 1959. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
16 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
17 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
18 Design and Defect Warranty required by the EPA covers repair of emission control or emission
19 related parts, which fail to function or function improperly because of a defect in materials or
20 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
21 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
22 comes first.

23 1960. As manufacturers of light-duty vehicles, Defendants were required to provide these
24 warranties to purchasers or lessees of Class Vehicles.

25 1961. Defendants’ warranties formed a basis of the bargain that was reached when
26 consumers purchased or leased Class Vehicles.

27 1962. Despite the existence of warranties, Defendants failed to inform North Dakota State
28 Class members that the Class Vehicles were defective and intentionally designed and manufactured

1 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
2 regulators and represented to consumers who purchased or leased them, and Defendants failed to
3 fix the defective emission components free of charge.

4 1963. Defendants breached the express warranty promising to repair and correct
5 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
6 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

7 1964. Affording Defendants a reasonable opportunity to cure their breach of written
8 warranties would be unnecessary and futile here.

9 1965. Furthermore, the limited warranty promising to repair and correct Defendants'
10 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
11 insufficient to make North Dakota State Class members whole and because Defendants have failed
12 and/or have refused to adequately provide the promised remedies within a reasonable time.

13 1966. Accordingly, recovery by North Dakota State Class members is not restricted to the
14 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
15 and they seek all remedies as allowed by law.

16 1967. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
17 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
18 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
19 material facts regarding the Class Vehicles. North Dakota State Class members were therefore
20 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

21 1968. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
22 through the limited remedy of repairing and correcting Defendants' defect in materials and
23 workmanship as many incidental and consequential damages have already been suffered because of
24 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
25 failure to provide such limited remedy within a reasonable time, and any limitation on North
26 Dakota State Class members' remedies would be insufficient to make them whole.

27 1969. Finally, because of Defendants' breach of warranty as set forth herein, North Dakota
28 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance

1 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
2 owned or leased, and for such other incidental and consequential damages as allowed.

3 1970. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 1971. As a direct and proximate result of Defendants' breach of express warranties, North
6 Dakota State Class members have been damaged in an amount to be determined at trial.

7 **NORTH DAKOTA COUNT III:**
8 **Breach of Implied Warranty of Merchantability**
9 **N.D. Cent. Code §§ 41-02-31 and 41-02.1-21**
10 **(On Behalf of the North Dakota State Class)**

11 1972. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 1973. This count is brought on behalf of the North Dakota State Class against all
14 Defendants.

15 1974. Defendants are and were at all relevant times "merchant[s]" with respect to motor
16 vehicles under N.D. Cent. Code § 41-02.04(3) and "sellers" of motor vehicles under
17 § 41-02-03(1)(d).

18 1975. With respect to leases, Defendants are and were at all relevant times "lessors" of
19 motor vehicles under N.D. Cent. Code § 41-02.1-03(1)(p).

20 1976. The Class Vehicles are and were at all relevant times "goods" within the meaning of
21 N.D. Cent. Code § 41-02-05(2) and N.D. Cent. Code § 41-02.1-03(1)(h).

22 1977. A warranty that the Class Vehicles were in merchantable condition and fit for the
23 ordinary purpose for which vehicles are used is implied by law pursuant to N.D. Cent. Code
24 § 41-02-31 and N.D. Cent. Code § 41-02.1-21.

25 1978. These Class Vehicles, when sold or leased and at all times thereafter, were
26 materially different from vehicles Defendants submitted for emissions testing and/or did not
27 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
28 fit for the ordinary purpose for which vehicles are used.

1 1979. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators' investigations.

3 1980. As a direct and proximate result of Defendants' breach of the implied warranty of
4 merchantability, North Dakota State Class members have been damaged in an amount to be proven
5 at trial.

6 **OHIO COUNT I:**
7 **Violations of the Ohio Consumer Sales Practices Act**
8 **Ohio Rev. Code § 1345.01 *et seq.***
9 **(On Behalf of the Ohio State Class)**

10 1981. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

11 1982. Plaintiff Christopher Allen (for the purposes of this count, "Plaintiff") brings this
12 claim on behalf of himself and the Ohio State Class against all Defendants.

13 1983. Defendants, Plaintiff, and Ohio State Class members are "persons" within the
14 meaning of Ohio Rev. Code § 1345.01(B). Defendants are a "supplier" as defined by Ohio Rev.
15 Code § 1345.01(C).

16 1984. Plaintiff and the Ohio State Class are "consumers" as that term is defined in Ohio
17 Rev. Code § 1345.01(D), and their purchase and leases of the Class Vehicles with the Defect
18 Devices installed in them are "consumer transactions" within the meaning of Ohio Rev. Code
19 § 1345.01(A).

20 1985. Ohio Rev. Code § 1345.02, prohibits unfair or deceptive acts or practices in
21 connection with a consumer transaction. Ohio CSPA prohibits a supplier from (i) representing that
22 goods have characteristics, uses or benefits which the goods do not have; (ii) representing that their
23 goods are of a particular quality or grade that the product is not; and (iii) representing that the
24 subject of a consumer transaction has been supplied in accordance with a previous representation, if
25 it has not.

26 1986. In the course of their business, Defendants concealed and suppressed material facts
27 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
28 emissions testing that were different from production vehicles and/or (b) falsely attesting that

1 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
2 did not.

3 1987. Plaintiff and Ohio State Class members had no way of discerning that Defendants'
4 representations were false and misleading because Plaintiff and Ohio State Class members did not
5 have access to Defendants' emissions certification test vehicles and Defendants' emissions-related
6 hardware was extremely sophisticated technology.

7 1988. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
8 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
9 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
10 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
11 transaction involving Class Vehicles has been supplied in accordance with a previous
12 representation when it has not.

13 1989. Defendants intentionally and knowingly misrepresented material facts regarding the
14 Class Vehicles with intent to mislead Plaintiff and the Ohio State Class.

15 1990. Defendants knew or should have known that their conduct violated the Ohio CSPA.

16 1991. The Ohio Attorney General has made available for public inspection prior state
17 court decisions which have held that the types of acts and omissions of Defendants in this
18 Complaint—including, but not limited to, the failure to honor both implied warranties and express
19 warranties, the making and distribution of false, deceptive, and/or misleading representations, and
20 the concealment and/or non-disclosure of a substantial defect—constitute deceptive sales practices
21 in violation of the CSPA. These cases include, but are not limited to, the following:

22 A. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);

23 B. *State ex rel. Betty D. Montgomery v. Ford Motor Co.* (OPIF #10002123);

24 C. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF
25 #10002025);

26 D. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573
27 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
28

1 E. *Borror v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525
2 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);

3 F. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);

4 G. *Cranford v. Joseph Airport Toyota, Inc.* (OPIF #10001586);

5 H. *Brown v. Spears* (OPIF #10000403);

6 I. *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);

7 J. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF #10001326); and

8 K. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524).

9 1992. Defendants owed Plaintiff and the Ohio State Class a duty to disclose the illegality
10 and public health risks, the true nature of the Class Vehicles, because Defendants:

11 L. possessed exclusive knowledge that they were manufacturing, selling, and
12 distributing vehicles throughout the United States that did not perform as advertised;

13 M. intentionally concealed the foregoing from regulators, Plaintiff, and Ohio
14 State Class members; and/or

15 N. made incomplete representations about the Class Vehicles' fuel economy
16 and emissions while purposefully withholding material facts that contradicted these
17 representations.

18 1993. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
19 consumption and emissions was material to Plaintiff and the Ohio State Class.

20 1994. Defendants' unfair or deceptive acts or practices were likely to and did in fact
21 deceive regulators and reasonable consumers, including Plaintiff and the Ohio State Class, about
22 the true environmental cleanliness and efficiency of the Class Vehicles, the quality of the
23 Defendants' brands, and the true value of the Class Vehicles.

24 1995. Defendants' violations present a continuing risk to Plaintiff and the Ohio State Class
25 as well as to the general public. Defendants' unlawful acts and practices complained of herein
26 affect the public interest.

27 1996. Plaintiff and Ohio State Class members suffered ascertainable loss and actual
28 damages as a direct and proximate result of Defendants' misrepresentations and concealment of

1 and failure to disclose material information. Defendants had an ongoing duty to all their customers
2 to refrain from unfair and deceptive practices under the Ohio CSPA. All owners of Class Vehicles
3 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
4 in the course of Defendants’ business.

5 1997. Pursuant to Ohio Rev. Code § 1345.09, Plaintiff and the Ohio State Class seek an
6 order enjoining Defendants’ unfair and/or deceptive acts or practices, actual damages - trebled, and
7 attorneys’ fees, costs, and any other just and proper relief, to the extend available under the Ohio
8 CSPA.

9 **OHIO COUNT II:**
10 **Violations of the Ohio Deceptive Trade Practices Act**
11 **Ohio Rev. Code § 4165.01 *et seq.***
12 **(On Behalf of the Ohio State Class)**

13 1998. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

14 1999. Plaintiff Christopher Allen (for the purposes of this count, “Plaintiff”) brings this
15 claim on behalf of himself and the Ohio State Class against all Defendants.

16 2000. Defendants, Plaintiff, and the Ohio State Class are “persons” within the meaning of
17 Ohio Rev. Code § 4165.01(D).

18 2001. Defendants engaged in “the course of [its] business” within the meaning of Ohio
19 Rev. Code § 4165.02(A) with respect to the acts alleged herein.

20 2002. The Ohio Deceptive Trade Practices Act, Ohio Rev. Code § 4165.02(A) (“Ohio
21 DTPA”) provides that a “person engages in a deceptive trade practice when, in the course of the
22 person’s business, vocation, or occupation,” the person does any of the following: “(2) Causes
23 likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or
24 certification of goods or services; . . . (7) Represents that goods or services have sponsorship,
25 approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a
26 person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
27 . . . (9) Represents that goods or services are of a particular standard, quality, or grade, or that goods
28 are of a particular style or model, if they are of another; . . . [or] (11) Advertises goods or services
with intent not to sell them as advertised.”

1 2003. In the course of their business, Defendants concealed and suppressed material facts
2 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
3 emissions testing that were different from production vehicles and/or (b) falsely attesting that
4 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
5 did not.

6 2004. Plaintiff and Ohio State Class members had no way of discerning that Defendants'
7 representations were false and misleading because Plaintiff and Ohio State Class members did not
8 have access to Defendants' emissions certification test vehicles and Defendants' emissions-related
9 hardware was extremely sophisticated technology.

10 2005. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
11 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
12 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
13 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
14 transaction involving Class Vehicles has been supplied in accordance with a previous
15 representation when it has not.

16 2006. Defendants intentionally and knowingly misrepresented material facts regarding the
17 Class Vehicles with intent to mislead Plaintiff and the Ohio State Class.

18 2007. Defendants knew or should have known that their conduct violated the Ohio DTPA.

19 2008. Defendants owed Plaintiff and the Ohio State Class a duty to disclose the illegality
20 and public health risks, the true nature of the Class Vehicles, because Defendants:

21 A. possessed exclusive knowledge that they were manufacturing, selling, and
22 distributing vehicles throughout the United States that did not perform as advertised;

23 B. intentionally concealed the foregoing from regulators, Plaintiff, and Ohio
24 State Class members; and/or

25 C. made incomplete representations about the Class Vehicles' true fuel
26 consumption and emissions while purposefully withholding material facts that contradicted
27 these representations.
28

1 2017. With respect to leases, Defendants are and were at all relevant times “lessors” of
2 motor vehicles under Ohio Rev. Code § 1310.01(A)(20).

3 2018. The Class Vehicles are and were at all relevant times “goods” within the meaning of
4 Ohio Rev. Code §§ 1302.01(8), and 1310.01(A)(8).

5 2019. In connection with the purchase or lease of each one of its new vehicles, Defendants
6 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
7 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

8 2020. Defendants also made numerous representations, descriptions, and promises
9 Plaintiff and to Ohio State Class members regarding the performance and emission controls of their
10 vehicles.

11 2021. For example, Defendants included in the warranty booklets for some or all of the
12 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
13 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
14 from defects in material and workmanship which would cause it not to meet those standards.”

15 2022. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
16 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
17 Warranty.”

18 2023. The EPA requires vehicle manufacturers to provide a Performance Warranty with
19 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
20 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
21 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
22 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
23 emission control components are covered for the first eight years or 80,000 miles (whichever
24 comes first). These major emission control components subject to the longer warranty include the
25 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
26 device or computer.

27 2024. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
28 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express

1 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
2 Design and Defect Warranty required by the EPA covers repair of emission control or emission
3 related parts, which fail to function or function improperly because of a defect in materials or
4 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
5 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
6 comes first.

7 2025. As manufacturers of light-duty vehicles, Defendants were required to provide these
8 warranties to purchasers or lessees of Class Vehicles.

9 2026. Defendants' warranties formed a basis of the bargain that was reached when
10 consumers purchased or leased Class Vehicles.

11 2027. Despite the existence of warranties, Defendants failed to inform Plaintiff and Ohio
12 State Class members that the Class Vehicles were defective and intentionally designed and
13 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
14 disclosed to regulators and represented to consumers who purchased or leased them, and
15 Defendants failed to fix the defective emission components free of charge.

16 2028. Defendants breached the express warranty promising to repair and correct
17 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
18 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

19 2029. Affording Defendants a reasonable opportunity to cure their breach of written
20 warranties would be unnecessary and futile here.

21 2030. Furthermore, the limited warranty promising to repair and correct Defendants'
22 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
23 insufficient to make Plaintiff and Ohio State Class members whole and because Defendants have
24 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

25 2031. Accordingly, recovery by Plaintiff and Ohio State Class members is not restricted to
26 the limited warranty promising to repair and correct Defendants' defect in materials and
27 workmanship, and they seek all remedies as allowed by law.

28

1 2049. Defendants engaged in “the course of [its] business” within the meaning of Okla.
2 Stat. Tit. 15 § 752.3 with respect to the acts alleged herein.

3 2050. The Oklahoma Consumer Protection Act (“Oklahoma CPA”) prohibits, in the
4 course of business: “mak[ing] a false or misleading representation, knowingly or with reason to
5 know, as to the characteristics . . . , uses, [or] benefits, of the subject of a consumer transaction,” or
6 making a false representation, “knowingly or with reason to know, that the subject of a consumer
7 transaction is of a particular standard, style or model, if it is of another or “[a]dvertis[ing],
8 knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as
9 advertised;” and otherwise committing “an unfair or deceptive trade practice.” Okla. Stat. Tit. 753.

10 2051. In the course of their business, Defendants concealed and suppressed material facts
11 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
12 emissions testing that were different from production vehicles and/or (b) falsely attesting that
13 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
14 did not.

15 2052. Oklahoma State Class members had no way of discerning that Defendants’
16 representations were false and misleading because Oklahoma State Class members did not have
17 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
18 hardware was extremely sophisticated technology.

19 2053. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
20 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
21 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
22 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
23 transaction involving Class Vehicles has been supplied in accordance with a previous
24 representation when it has not.

25 2054. Defendants intentionally and knowingly misrepresented material facts regarding the
26 Class Vehicles with intent to mislead the Oklahoma State Class.

27 2055. Defendants knew or should have known that their conduct violated the Oklahoma
28 CPA.

1 2056. Defendants owed the Oklahoma State Class a duty to disclose the illegality and
2 public health risks, the true nature of the Class Vehicles, because Defendants:

3 A. possessed exclusive knowledge that they were manufacturing, selling, and
4 distributing vehicles throughout the United States that did not perform as advertised;

5 B. intentionally concealed the foregoing from regulators and Oklahoma State
6 Class members; and/or

7 C. made incomplete representations about the Class Vehicles' true fuel
8 consumption and emissions while purposefully withholding material facts that contradicted
9 these representations.

10 2057. Defendants' concealment of the true characteristics of the Class Vehicles' true fuel
11 consumption and emissions was material to the Oklahoma State Class.

12 2058. Defendants' unfair or deceptive acts or practices were likely to and did in fact
13 deceive regulators and reasonable consumers, including the Oklahoma State Class, about the true
14 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
15 brands, and the true value of the Class Vehicles.

16 2059. Defendants' violations present a continuing risk to the Oklahoma State Class as well
17 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
18 public interest.

19 2060. Oklahoma State Class members suffered ascertainable loss and actual damages as a
20 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
21 disclose material information. Defendants had an ongoing duty to all their customers to refrain
22 from unfair and deceptive practices under the Oklahoma CPA. All owners and lessees of Class
23 Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and
24 practices made in the course of Defendants' business.

25 2061. Pursuant to Okla. Stat. Tit. 15 § 761.1, the Oklahoma State Class seeks an order
26 enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages, and
27 attorneys' fees, costs, and any other just and proper relief available under the Oklahoma CPA.
28

**OKLAHOMA COUNT II:
Breach of Express Warranty
Okla. Stat. Tit. 12 §§ 2-313 and 2A-210
(On Behalf of the Oklahoma State Class)**

1
2
3
4 2062. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
5 fully set forth herein.

6 2063. Plaintiff Philipp Novales-Li (for the purposes of this count, “Plaintiff”) brings this
7 claim on behalf of himself and the Oklahoma State Class against all Defendants.

8 2064. Defendants are and were at all relevant times “merchant[s]” with respect to motor
9 vehicles under Okla. Stat. Tit. 12A §§ 2-104(1) and 2-1103(3), and “sellers” of motor vehicles
10 under § 2A-103(1)(t).

11 2065. With respect to leases, Defendants are and were at all relevant times “lessors” of
12 motor vehicles under Okla. Stat. Tit. 12A § 2A-103(1)(p).

13 2066. The Class Vehicles are and were at all relevant times “goods” within the meaning of
14 Okla. Stat. Tit. 12A §§ 2-105(1) and 2A-103(1)(h).

15 2067. In connection with the purchase or lease of each one of its new vehicles, Defendants
16 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
17 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

18 2068. Defendants also made numerous representations, descriptions, and promises to
19 Oklahoma State Class members regarding the performance and emission controls of their vehicles.

20 2069. For example, Defendants included in the warranty booklets for some or all of the
21 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
22 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
23 from defects in material and workmanship which would cause it not to meet those standards.”

24 2070. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
25 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
26 Warranty.”

27 2071. The EPA requires vehicle manufacturers to provide a Performance Warranty with
28 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for

1 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
2 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
3 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
4 emission control components are covered for the first eight years or 80,000 miles (whichever
5 comes first). These major emission control components subject to the longer warranty include the
6 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
7 device or computer.

8 2072. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
9 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
10 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
11 Design and Defect Warranty required by the EPA covers repair of emission control or emission
12 related parts, which fail to function or function improperly because of a defect in materials or
13 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
14 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
15 comes first.

16 2073. As manufacturers of light-duty vehicles, Defendants were required to provide these
17 warranties to purchasers or lessees of Class Vehicles.

18 2074. Defendants' warranties formed a basis of the bargain that was reached when
19 consumers purchased or leased Class Vehicles.

20 2075. Despite the existence of warranties, Defendants failed to inform Oklahoma State
21 Class members that the Class Vehicles were defective and intentionally designed and manufactured
22 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
23 regulators and represented to consumers who purchased or leased them, and Defendants failed to
24 fix the defective emission components free of charge.

25 2076. Defendants breached the express warranty promising to repair and correct
26 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
27 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.
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1 2077. Affording Defendants a reasonable opportunity to cure their breach of written
2 warranties would be unnecessary and futile here.

3 2078. Furthermore, the limited warranty promising to repair and correct Defendants’
4 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
5 insufficient to make Oklahoma State Class members whole and because Defendants have failed
6 and/or have refused to adequately provide the promised remedies within a reasonable time.

7 2079. Accordingly, recovery by Oklahoma State Class members is not restricted to the
8 limited warranty promising to repair and correct Defendants’ defect in materials and workmanship,
9 and they seek all remedies as allowed by law.

10 2080. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
11 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
12 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
13 material facts regarding the Class Vehicles. Oklahoma State Class members were therefore induced
14 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

15 2081. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
16 through the limited remedy of repairing and correcting Defendants’ defect in materials and
17 workmanship as many incidental and consequential damages have already been suffered because of
18 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
19 failure to provide such limited remedy within a reasonable time, and any limitation on Oklahoma
20 State Class members’ remedies would be insufficient to make them whole.

21 2082. Finally, because of Defendants’ breach of warranty as set forth herein, Oklahoma
22 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
23 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
24 owned or leased, and for such other incidental and consequential damages as allowed.

25 2083. Defendants were provided reasonable notice of these issues by way of a letter sent
26 by Plaintiffs as well as the regulators’ investigations.

27 2084. As a direct and proximate result of Defendants’ breach of express warranties,
28 Oklahoma State Class members have been damaged in an amount to be determined at trial.

**OKLAHOMA COUNT III:
Breach of Implied Warranty of Merchantability
Okla. Stat. Tit. 12A §§ 2-314 and 2A-212
(On Behalf of the Oklahoma State Class)**

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2085. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2086. Plaintiff Philipp Novales-Li (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Oklahoma State Class against all Defendants.

2087. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Okla. Stat. Tit. 12A §§ 2-104(1) and 2-1103(3), and “sellers” of motor vehicles under § 2A-103(1)(t).

2088. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Okla. Stat. Tit. 12A § 2A-103(1)(p).

2089. The Class Vehicles are and were at all relevant times “goods” within the meaning of Okla. Stat. Tit. 12A §§ 2-105(1) and 2A-103(1)(h).

2090. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Okla. Stat. Tit. 12A §§ 2-314 and 2A-212.

2091. These Class Vehicles, when sold or leased and at all times thereafter, were materially different from vehicles Defendants submitted for emissions testing and/or did not comply with emissions regulations when being driven in Sport Plus mode, and were therefore not fit for the ordinary purpose for which vehicles are used.

2092. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs as well as the regulators’ investigations.

2093. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Oklahoma State Class members have been damaged in an amount to be proven at trial.

1 2102. Defendants knew or should have known that their conduct violated the Oregon
2 UTPA.

3 2103. Defendants owed the Oregon State Class a duty to disclose the illegality and public
4 health risks, the true nature of the Class Vehicles, because Defendants:

5 A. possessed exclusive knowledge that they were manufacturing, selling, and
6 distributing vehicles throughout the United States that did not perform as advertised;

7 B. intentionally concealed the foregoing from regulators and Oregon State
8 Class members; and/or

9 C. made incomplete representations about the Class Vehicles' fuel economy
10 and emissions while purposefully withholding material facts that contradicted these
11 representations.

12 2104. Defendants' concealment of the Class Vehicles' true fuel consumption and
13 emissions were material to the Oregon State Class.

14 2105. Defendants' unfair or deceptive acts or practices were likely to and did in fact
15 deceive regulators and reasonable consumers, including the Oregon State Class, about the true
16 environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the Defendants'
17 brands, and the true value of the Class Vehicles.

18 2106. Defendants' violations present a continuing risk to the Oregon State Class as well as
19 to the general public. Defendants' unlawful acts and practices complained of herein affect the
20 public interest.

21 2107. Plaintiffs and Oregon State Class members suffered ascertainable loss and actual
22 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
23 and failure to disclose material information. Defendants had an ongoing duty to all their customers
24 to refrain from unfair and deceptive practices under the Oregon UTPA. All owners and lessees of
25 Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and
26 practices made in the course of Defendants' business.

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1 2117. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 2118. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 2119. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 2120. As manufacturers of light-duty vehicles, Defendants were required to provide these
22 warranties to purchasers or lessees of Class Vehicles.

23 2121. Defendants’ warranties formed a basis of the bargain that was reached when
24 consumers purchased or leased Class Vehicles.

25 2122. Despite the existence of warranties, Defendants failed to inform Oregon State Class
26 members that the Class Vehicles were defective and intentionally designed and manufactured to
27 emit more pollution and achieve worse fuel economy on the road than what was disclosed to
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1 regulators and represented to consumers who purchased or leased them, and Defendants failed to
2 fix the defective emission components free of charge.

3 2123. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 2124. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 2125. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
10 insufficient to make Oregon State Class members whole and because Defendants have failed and/or
11 have refused to adequately provide the promised remedies within a reasonable time.

12 2126. Accordingly, recovery by Oregon State Class members is not restricted to the
13 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
14 and they seek all remedies as allowed by law.

15 2127. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
16 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
17 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
18 material facts regarding the Class Vehicles. Oregon State Class members were therefore induced to
19 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

20 2128. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
21 through the limited remedy of repairing and correcting Defendants' defect in materials and
22 workmanship as many incidental and consequential damages have already been suffered because of
23 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
24 failure to provide such limited remedy within a reasonable time, and any limitation on Oregon State
25 Class members' remedies would be insufficient to make them whole.

26 2129. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiff and
27 Oregon State Class members assert, as additional and/or alternative remedies, the revocation of
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1 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
2 currently owned or leased, and for such other incidental and consequential damages as allowed.

3 2130. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 2131. As a direct and proximate result of Defendants' breach of express warranties,
6 Oregon State Class members have been damaged in an amount to be determined at trial.

7 **OREGON COUNT III:**
8 **Breach of Implied Warranty of Merchantability**
9 **Or. Rev. Stat. §§ 72.3140 and 72A.2120**
10 **(On Behalf of the Oregon State Class)**

11 2132. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 2133. Plaintiffs brings this claim on behalf of themselves and the Oregon State Class
14 against all Defendants.

15 2134. Defendants are and were at all relevant times "merchant[s]" with respect to motor
16 vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and "sellers" of motor vehicles
17 under § 72.1030(1)(d).

18 2135. With respect to leases, Defendants are and were at all relevant times "lessors" of
19 motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).

20 2136. The Class Vehicles are and were at all relevant times "goods" within the meaning of
21 Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h).

22 2137. A warranty that the Class Vehicles were in merchantable condition and fit for the
23 ordinary purpose for which vehicles are used is implied by law pursuant to Or. Rev. Stat.
24 §§ 72.3140 and 72A-2120.

25 2138. These Class Vehicles, when sold or leased and at all times thereafter, were
26 materially different from vehicles Defendants submitted for emissions testing and/or did not
27 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
28 fit for the ordinary purpose for which vehicles are used.

1 2139. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators' investigations.

3 2140. As a direct and proximate result of Defendants' breach of the implied warranty of
4 merchantability, Oregon State Class members have been damaged in an amount to be proven at
5 trial.

6 **PENNSYLVANIA COUNT I:**
7 **Violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law**
8 **73 P.S. § 201-1 *et seq.***
9 **(On Behalf of the Pennsylvania State Class)**

10 2141. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
11 set forth herein.

12 2142. Plaintiffs Saul Luvice, Jino Masone, and Robbie McCarthy (for the purposes of this
13 count, "Plaintiffs") bring this claim on behalf of themselves and the Pennsylvania State Class
14 against all Defendants.

15 2143. Plaintiffs, Defendants, and the Pennsylvania State Class are "persons" within the
16 meaning of 73 P.S. § 201-2(2).

17 2144. Defendants engaged in "trade" or "commerce" within the meaning of 73 P.S.
18 § 201-2(3).

19 2145. The Pennsylvania Unfair Trade Practices Act ("Pennsylvania UTPA") prohibits
20 "unfair or deceptive acts or practices in the conduct of any trade or commerce." 73 P.S. § 201 3.

21 2146. In the course of their business, Defendants concealed and suppressed material facts
22 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
23 emissions testing that were different from production vehicles and/or (b) falsely attesting that
24 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
25 did not.

26 2147. Plaintiffs and Pennsylvania State Class members had no way of discerning that
27 Defendants' representations were false and misleading because Pennsylvania State Class members
28 did not have access to Defendants' emissions certification test vehicles and Defendants'
emissions-related hardware was extremely sophisticated technology.

1 2148. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
5 transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 2149. Defendants intentionally and knowingly misrepresented material facts regarding the
8 Class Vehicles with intent to mislead the Pennsylvania State Class.

9 2150. Defendants knew or should have known that their conduct violated the
10 Pennsylvania UTPA.

11 2151. Defendants owed the Pennsylvania State Class a duty to disclose the illegality and
12 public health risks, the true nature of the Class Vehicles, because Defendants:

13 A. possessed exclusive knowledge that they were manufacturing, selling, and
14 distributing vehicles throughout the United States that did not perform as advertised;

15 B. intentionally concealed the foregoing from regulators and Pennsylvania
16 State Class members; and/or

17 C. made incomplete representations about the Class Vehicles' fuel economy
18 and emissions while purposefully withholding material facts that contradicted these
19 representations.

20 2152. Defendants' concealment of the Class Vehicles' true fuel consumption and
21 emissions was material to the Pennsylvania State Class.

22 2153. Defendants' unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including Plaintiffs and the Pennsylvania State
24 Class, about the true environmental cleanliness and fuel efficiency of the Class Vehicles, the
25 quality of the Defendants' brands, and the true value of the Class Vehicles.

26 2154. Defendants' violations present a continuing risk to the Pennsylvania State Class as
27 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
28 the public interest.

1 2163. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

4 2164. Defendants also made numerous representations, descriptions, and promises to
5 Pennsylvania State Class members regarding the performance and emission controls of their
6 vehicles.

7 2165. For example, Defendants included in the warranty booklets for some or all of the
8 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
9 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
10 from defects in material and workmanship which would cause it not to meet those standards.”

11 2166. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
12 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
13 Warranty.”

14 2167. The EPA requires vehicle manufacturers to provide a Performance Warranty with
15 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
16 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
17 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
18 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
19 emission control components are covered for the first eight years or 80,000 miles (whichever
20 comes first). These major emission control components subject to the longer warranty include the
21 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
22 device or computer.

23 2168. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
24 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
25 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
26 Design and Defect Warranty required by the EPA covers repair of emission control or emission
27 related parts, which fail to function or function improperly because of a defect in materials or
28 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2169. As manufacturers of light-duty vehicles, Defendants were required to provide these
4 warranties to purchasers or lessees of Class Vehicles.

5 2170. Defendants' warranties formed a basis of the bargain that was reached when
6 consumers purchased or leased Class Vehicles.

7 2171. Despite the existence of warranties, Defendants failed to inform Plaintiffs and
8 Pennsylvania State Class members that the Class Vehicles were defective and intentionally
9 designed and manufactured to emit more pollution and achieve worse fuel economy on the road
10 than what was disclosed to regulators and represented to consumers who purchased or leased them,
11 and Defendants failed to fix the defective emission components free of charge.

12 2172. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2173. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2174. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
19 insufficient to make Pennsylvania State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2175. Accordingly, recovery by Plaintiffs and Pennsylvania State Class members is not
22 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
23 and workmanship, and they seek all remedies as allowed by law.

24 2176. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
25 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
26 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Pennsylvania State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 2185. The Class Vehicles are and were at all relevant times “goods” within the meaning of
2 13 Pa. Cons. Stat. §§ 2105(a) and 2A103(a).

3 2186. A warranty that the Class Vehicles were in merchantable condition and fit for the
4 ordinary purpose for which vehicles are used is implied by law pursuant to 13 Pa. Cons. Stat.
5 §§ 2314 and 2A212.

6 2187. These Class Vehicles, when sold or leased and at all times thereafter, were
7 materially different from vehicles Defendants submitted for emissions testing and/or did not
8 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
9 fit for the ordinary purpose for which vehicles are used.

10 2188. Defendants were provided reasonable notice of these issues by way of a letter sent
11 by Plaintiffs as well as the regulators’ investigations.

12 2189. As a direct and proximate result of Defendants’ breach of the implied warranty of
13 merchantability, Pennsylvania State Class members have been damaged in an amount to be proven
14 at trial.

15 **RHODE ISLAND COUNT I:**
16 **Violations of the Rhode Island Deceptive Trade Practices and Consumer Protection Law**
17 **R.I. Gen. Laws § 6-13.1 *et seq.***
(On Behalf of the Rhode Island State Class)

18 2190. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

19 2191. This count is brought on behalf of the Rhode Island State Class against all
20 Defendants.

21 2192. Defendants, the Rhode Island State Class are “persons” within the meaning of R.I.
22 Gen. Laws § 6-13.1-1(3).

23 2193. Defendants are engaged in “trade” or “commerce” within the meaning of R.I. Gen.
24 Laws § 6-13.1-1(5).

25 2194. The Rhode Island Deceptive Trade Practices Act (“Rhode Island DTPA”) prohibits
26 “unfair or deceptive acts or practices in the conduct of any trade or commerce” including: (v)
27 [r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses,
28 benefits, or quantities that they do not have”; “(vii) [r]epresenting that goods or services are of a

1 particular standard, quality, or grade . . . , if they are of another”; (ix) [a]dvertising goods or services
2 with intent not to sell them as advertised”; “(xiii) [u]sing any other methods, acts or practices which
3 mislead or deceive members of the public in a material respect.” R.I. Gen. Laws § 6-13.1-1(6).

4 2195. In the course of their business, Defendants concealed and suppressed material facts
5 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
6 emissions testing that were different from production vehicles and/or (b) falsely attesting that
7 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
8 did not.

9 2196. Rhode Island State Class members had no way of discerning that Defendants’
10 representations were false and misleading because Rhode Island State Class members did not have
11 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
12 hardware was extremely sophisticated technology.

13 2197. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
14 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
15 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
16 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
17 transaction involving Class Vehicles has been supplied in accordance with a previous
18 representation when it has not.

19 2198. Defendants intentionally and knowingly misrepresented material facts regarding the
20 Class Vehicles with intent to mislead the Rhode Island State Class.

21 2199. Defendants knew or should have known that their conduct violated the Rhode Island
22 DTPA.

23 2200. Defendants owed the Rhode Island State Class a duty to disclose the illegality and
24 public health risks, the true nature of the Class Vehicles, because Defendants:

25 A. possessed exclusive knowledge that they were manufacturing, selling, and
26 distributing vehicles throughout the United States that did not perform as advertised;

27 B. intentionally concealed the foregoing from regulators and Rhode Island
28 State Class members; and/or

1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 2201. Defendants' concealment of the Class Vehicles' true fuel consumption and
5 emissions was material to the Rhode Island State Class.

6 2202. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the Rhode Island State Class, about the
8 true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
9 Defendants' brands, and the true value of the Class Vehicles.

10 2203. Defendants' violations present a continuing risk to the Rhode Island State Class as
11 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
12 the public interest.

13 2204. Rhode Island State Class members suffered ascertainable loss and actual damages
14 as a direct and proximate result of Defendants' misrepresentations and concealment of and failure
15 to disclose material information. Defendants had an ongoing duty to all their customers to refrain
16 from unfair and deceptive practices under the Rhode Island DTPA. All owners of Class Vehicles
17 suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made
18 in the course of Defendants' business.

19 2205. The Rhode Island State Class is entitled to recover the greater of actual damages or
20 \$200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a). The Rhode Island State Class is also entitled to
21 punitive damages because Defendants engaged in conduct amounting to a particularly aggravated,
22 deliberate disregard of the rights of others.

23 **RHODE ISLAND COUNT II:**
24 **Breach of Express Warranty**
25 **6A R.I. Gen. Laws §§ 6A-2-313 and 6A-2.1-210**
26 **(On Behalf of the Rhode Island State Class)**

27 2206. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
28 fully set forth herein.

1 2207. This count is brought on behalf of the Rhode Island State Class against all
2 Defendants.

3 2208. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under 6A R.I. Gen. Laws §§ 6A-2-104(1) and 6A-2.1-103(1)(t), and “sellers” of motor
5 vehicles under § 6A-2-103(a)(4).

6 2209. With respect to leases, Defendants are and were at all relevant times “lessors” of
7 motor vehicles under 6A R.I. Gen. Laws § 6A-2.1-103(1)(p).

8 2210. The Class Vehicles are and were at all relevant times “goods” within the meaning of
9 6A R.I. Gen. Laws §§ 6A-2-105(1) and 6A-2.1-103(1)(h).

10 2211. In connection with the purchase or lease of each one of its new vehicles, Defendants
11 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
12 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

13 2212. Defendants also made numerous representations, descriptions, and promises to
14 Rhode Island State Class members regarding the performance and emission controls of their
15 vehicles.

16 2213. For example, Defendants included in the warranty booklets for some or all of the
17 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
18 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
19 from defects in material and workmanship which would cause it not to meet those standards.”

20 2214. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
21 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
22 Warranty.”

23 2215. The EPA requires vehicle manufacturers to provide a Performance Warranty with
24 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
25 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
26 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
27 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
28 emission control components are covered for the first eight years or 80,000 miles (whichever

1 comes first). These major emission control components subject to the longer warranty include the
2 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
3 device or computer.

4 2216. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
5 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
6 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
7 Design and Defect Warranty required by the EPA covers repair of emission control or emission
8 related parts, which fail to function or function improperly because of a defect in materials or
9 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
10 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
11 comes first.

12 2217. As manufacturers of light-duty vehicles, Defendants were required to provide these
13 warranties to purchasers or lessees of Class Vehicles.

14 2218. Defendants' warranties formed a basis of the bargain that was reached when
15 consumers purchased or leased Class Vehicles.

16 2219. Despite the existence of warranties, Defendants failed to inform Rhode Island State
17 Class members that the Class Vehicles were defective and intentionally designed and manufactured
18 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
19 regulators and represented to consumers who purchased or leased them, and Defendants failed to
20 fix the defective emission components free of charge.

21 2220. Defendants breached the express warranty promising to repair and correct
22 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
23 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

24 2221. Affording Defendants a reasonable opportunity to cure their breach of written
25 warranties would be unnecessary and futile here.

26 2222. Furthermore, the limited warranty promising to repair and correct Defendants'
27 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
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1 insufficient to make Rhode Island State Class members whole and because Defendants have failed
2 and/or have refused to adequately provide the promised remedies within a reasonable time.

3 2223. Accordingly, recovery by Rhode Island State Class members is not restricted to the
4 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
5 and they seek all remedies as allowed by law.

6 2224. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
7 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
8 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
9 material facts regarding the Class Vehicles. Rhode Island State Class members were therefore
10 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

11 2225. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
12 through the limited remedy of repairing and correcting Defendants' defect in materials and
13 workmanship as many incidental and consequential damages have already been suffered because of
14 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
15 failure to provide such limited remedy within a reasonable time, and any limitation on Rhode Island
16 State Class members' remedies would be insufficient to make them whole.

17 2226. Finally, because of Defendants' breach of warranty as set forth herein, Rhode Island
18 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
19 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
20 owned or leased, and for such other incidental and consequential damages as allowed.

21 2227. Defendants were provided reasonable notice of these issues by way of a letter sent
22 by Plaintiffs as well as the regulators' investigations.

23 2228. As a direct and proximate result of Defendants' breach of express warranties, Rhode
24 Island State Class members have been damaged in an amount to be determined at trial.

**RHODE ISLAND COUNT III:
Breach of Implied Warranty of Merchantability
6A R.I. Gen. Laws §§ 6A-2-314 and 6A-2.1-212
(On Behalf of the Rhode Island State Class)**

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2229. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2230. This count is brought on behalf of the Rhode Island State Class against all Defendants.

2231. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under 6A R.I. Gen. Laws §§ 6A-2-104(1) and 6A-2.1-103(1)(t), and “sellers” of motor vehicles under § 6A-2-103(a)(4).

2232. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under 6A R.I. Gen. Laws § 6A-2.1-103(1)(p).

2233. The Class Vehicles are and were at all relevant times “goods” within the meaning of 6A R.I. Gen. Laws §§ 6A-2-105(1) and 6A-2.1-103(1)(h).

2234. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 6A R.I. Gen. Laws §§ 6A-2-314 and 6A-2.1-212.

2235. These Class Vehicles, when sold or leased and at all times thereafter, were materially different from vehicles Defendants submitted for emissions testing and/or did not comply with emissions regulations when being driven in Sport Plus mode, and were therefore not fit for the ordinary purpose for which vehicles are used.

2236. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs as well as the regulators’ investigations.

2237. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Rhode Island State Class members have been damaged in an amount to be proven at trial.

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**SOUTH CAROLINA COUNT I:
Violations of the South Carolina Unfair Trade Practices Act
S.C. Code Ann. § 39-5-10 *et seq.*
(On Behalf of the South Carolina State Class)**

2238. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2239. This count is brought on behalf of the South Carolina State Class against all Defendants.

2240. Defendants and the South Carolina State Class are “persons” within the meaning of S.C. Code § 39-5-10(a).

2241. Defendants are engaged in “trade” or “commerce” within the meaning of S.C. Code § 39-5-10(b).

2242. The South Carolina Unfair Trade Practices Act (“South Carolina UTPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C. Code § 39-5-20(a).

2243. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for emissions testing that were different from production vehicles and/or (b) falsely attesting that certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact did not.

2244. South Carolina State Class members had no way of discerning that Defendants’ representations were false and misleading because South Carolina State Class members did not have access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware was extremely sophisticated technology.

2245. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a

1 transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 2246. Defendants intentionally and knowingly misrepresented material facts regarding the
4 Class Vehicles with intent to mislead the South Carolina State Class.

5 2247. Defendants knew or should have known that their conduct violated the South
6 Carolina UTPA.

7 2248. Defendants owed the South Carolina State Class a duty to disclose the illegality and
8 public health risks, the true nature of the Class Vehicles, because Defendants:

9 A. possessed exclusive knowledge that they were manufacturing, selling, and
10 distributing vehicles throughout the United States that did not perform as advertised;

11 B. intentionally concealed the foregoing from regulators and South Carolina
12 State Class members; and/or

13 C. made incomplete representations about the Class Vehicles' fuel economy
14 and emissions while purposefully withholding material facts that contradicted these
15 representations.

16 2249. Defendants' concealment of the Class Vehicles' true fuel consumption and
17 emissions was material to the South Carolina State Class.

18 2250. Defendants' unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including the South Carolina State Class, about the
20 true environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
21 brands, and the true value of the Class Vehicles.

22 2251. Defendants' violations present a continuing risk to the South Carolina Class as well
23 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
24 public interest.

25 2252. South Carolina State Class members suffered ascertainable loss and actual damages
26 as a direct and proximate result of Defendants' misrepresentations and concealment of and failure
27 to disclose material information. Defendants had an ongoing duty to all their customers to refrain
28 from unfair and deceptive practices under the South Carolina UTPA. All owners of Class Vehicles

1 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
2 in the course of Defendants’ business.

3 2253. Pursuant to S.C. Code § 39-5-140(a), the South Carolina State Class seeks an order
4 enjoining Defendants’ unfair and/or deceptive acts or practices, damages, treble damages for
5 willful and knowing violations, punitive damages, and attorneys’ fees, costs, and any other just and
6 proper relief available under the South Carolina UTPA.

7 **SOUTH CAROLINA COUNT II:**
8 **Violations of the South Carolina Regulation of Manufacturers, Distributors, & Dealers Act**
9 **S.C. Code Ann. § 56-15-10 *et seq.***
10 **(On Behalf of the South Carolina State Class)**

11 2254. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 2255. This count is brought on behalf of the South Carolina State Class against all
14 Defendants.

15 2256. Defendants are “manufacturer[s]” as set forth in S.C. Code Ann. § 56-15-10, as it is
16 engaged in the business of manufacturing or assembling new and unused motor vehicles.

17 2257. Defendants committed unfair or deceptive acts or practices that violated the South
18 Carolina Regulation of Manufacturers, Distributors, and Dealers Act (“Dealers Act”), S.C. Code
19 Ann. § 56-15-30.

20 2258. Defendants engaged in actions which were arbitrary, in bad faith, unconscionable,
21 and which caused damage to the South Carolina State Class and to the public.

22 2259. Defendants’ bad faith and unconscionable actions include, but are not limited to: (1)
23 representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not
24 have, (2) representing that Class Vehicles are of a particular standard, quality, and grade when they
25 are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, (4) representing
26 that a transaction involving Class Vehicles confers or involves rights, remedies, and obligations
27 which it does not, and (5) representing that the subject of a transaction involving Class Vehicles has
28 been supplied in accordance with a previous representation when it has not.

1 2269. Defendants also made numerous representations, descriptions, and promises to
2 South Carolina State Class members regarding the performance and emission controls of their
3 vehicles.

4 2270. For example, Defendants included in the warranty booklets for some or all of the
5 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
6 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
7 from defects in material and workmanship which would cause it not to meet those standards.”

8 2271. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
9 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
10 Warranty.”

11 2272. The EPA requires vehicle manufacturers to provide a Performance Warranty with
12 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
13 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
14 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
15 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
16 emission control components are covered for the first eight years or 80,000 miles (whichever
17 comes first). These major emission control components subject to the longer warranty include the
18 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
19 device or computer.

20 2273. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
21 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
22 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
23 Design and Defect Warranty required by the EPA covers repair of emission control or emission
24 related parts, which fail to function or function improperly because of a defect in materials or
25 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
26 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
27 comes first.

1 2274. As manufacturers of light-duty vehicles, Defendants were required to provide these
2 warranties to purchasers or lessees of Class Vehicles.

3 2275. Defendants' warranties formed a basis of the bargain that was reached when
4 consumers purchased or leased Class Vehicles.

5 2276. Despite the existence of warranties, Defendants failed to inform South Carolina
6 State Class members that the Class Vehicles were defective and intentionally designed and
7 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
8 disclosed to regulators and represented to consumers who purchased or leased them, and
9 Defendants failed to fix the defective emission components free of charge.

10 2277. Defendants breached the express warranty promising to repair and correct
11 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
12 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

13 2278. Affording Defendants a reasonable opportunity to cure their breach of written
14 warranties would be unnecessary and futile here.

15 2279. Furthermore, the limited warranty promising to repair and correct Defendants'
16 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
17 insufficient to make South Carolina State Class members whole and because Defendants have
18 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

19 2280. Accordingly, recovery by South Carolina State Class members is not restricted to
20 the limited warranty promising to repair and correct Defendants' defect in materials and
21 workmanship, and they seek all remedies as allowed by law.

22 2281. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
23 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
24 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
25 material facts regarding the Class Vehicles. South Carolina State Class members were therefore
26 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

27 2282. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
28 through the limited remedy of repairing and correcting Defendants' defect in materials and

1 workmanship as many incidental and consequential damages have already been suffered because of
2 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
3 failure to provide such limited remedy within a reasonable time, and any limitation on South
4 Carolina State Class members' remedies would be insufficient to make them whole.

5 2283. Finally, because of Defendants' breach of warranty as set forth herein, South
6 Carolina State Class members assert, as additional and/or alternative remedies, the revocation of
7 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
8 currently owned or leased, and for such other incidental and consequential damages as allowed.

9 2284. Defendants were provided reasonable notice of these issues by way of a letter sent
10 by Plaintiffs as well as the regulators' investigations.

11 2285. As a direct and proximate result of Defendants' breach of express warranties, South
12 Carolina State Class members have been damaged in an amount to be determined at trial.

13 **SOUTH CAROLINA COUNT IV:**
14 **Breach of Implied Warranty of Merchantability**
15 **S.C. Code §§ 36-2-314 and 36-2A-212**
16 **(On Behalf of the South Carolina State Class)**

17 2286. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
18 forth herein.

19 2287. This count is brought on behalf of the South Carolina State Class against all
20 Defendants.

21 2288. Defendants are and were at all relevant times "merchant[s]" with respect to motor
22 vehicles under S.C. Code §§ 36-2-104(1) and 36-2A-103(1)(t), and "sellers" of motor vehicles
23 under § 36-2-103(1)(d).

24 2289. With respect to leases, Defendants are and were at all relevant times "lessors" of
25 motor vehicles under S.C. Code § 36-2A-103(1)(p).

26 2290. The Class Vehicles are and were at all relevant times "goods" within the meaning of
27 S.C. Code §§ 36-2-105(1) and 36-2A-103(1)(h).
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1 the sale or advertisement of any merchandise, regardless of whether any person has in fact been
2 misled, deceived, or damaged thereby.” S.D. Codified Laws § 37-24-6(1).

3 2300. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
5 emissions testing that were different from production vehicles and/or (b) falsely attesting that
6 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
7 did not.

8 2301. South Dakota State Class members had no way of discerning that Defendants’
9 representations were false and misleading because South Dakota State Class members did not have
10 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
11 hardware was extremely sophisticated technology.

12 2302. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
13 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
14 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
15 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
16 transaction involving Class Vehicles has been supplied in accordance with a previous
17 representation when it has not.

18 2303. Defendants intentionally and knowingly misrepresented material facts regarding the
19 Class Vehicles with intent to mislead the South Dakota State Class.

20 2304. Defendants knew or should have known that their conduct violated the South
21 Dakota CPA.

22 2305. Defendants owed the South Dakota State Class a duty to disclose the illegality and
23 public health risks, the true nature of the Class Vehicles, because Defendants:

24 A. possessed exclusive knowledge that they were manufacturing, selling, and
25 distributing vehicles throughout the United States that did not perform as advertised;

26 B. intentionally concealed the foregoing from regulators and South Dakota
27 State Class members; and/or
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1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 2306. Defendants' concealment of the Class Vehicles' true fuel consumption and
5 emissions were material to the South Dakota State Class.

6 2307. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the South Dakota State Class, about the
8 true environmental cleanliness and fuel efficiency of the Class Vehicles, the quality of the
9 Defendants' brands, and the true value of the Class Vehicles.

10 2308. Defendants' violations present a continuing risk to the South Dakota Class as well
11 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
12 public interest.

13 2309. South Dakota State Class members suffered ascertainable loss and actual damages
14 as a direct and proximate result of Defendants' misrepresentations and concealment of and failure
15 to disclose material information. Defendants had an ongoing duty to all their customers to refrain
16 from unfair and deceptive practices under the South Dakota CPA. All owners of Class Vehicles
17 suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made
18 in the course of Defendants' business.

19 2310. Pursuant to S.D. Codified Laws § 37-24-31, the South Dakota State Class seeks an
20 order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages,
21 and attorneys' fees, costs, and any other just and proper relief to the extent available under the
22 South Dakota CPA.

23 **SOUTH DAKOTA COUNT II:**
24 **Breach of Express Warranty**
25 **S.D. Codified Laws §§ 57A-2-313 and 57-2A-210**
26 **(On Behalf of the South Dakota State Class)**

27 2311. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
28 fully set forth herein.

1 2312. This count is brought on behalf of the South Dakota State Class against all
2 Defendants.

3 2313. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under S.D. Codified Laws §§ 57A-104(1) and 57A-2A-103(1)(t), and “sellers” of motor
5 vehicles under § 57A-104(1)(d).

6 2314. With respect to leases, Defendants are and were at all relevant times “lessors” of
7 motor vehicles under S.D. Codified Laws § 57A-2A-103(1)(p).

8 2315. The Class Vehicles are and were at all relevant times “goods” within the meaning of
9 S.D. Codified Laws §§ 57A-2-105(1) and 57A-2A-103(1)(h).

10 2316. In connection with the purchase or lease of each one of its new vehicles, Defendants
11 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
12 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

13 2317. Defendants also made numerous representations, descriptions, and promises to
14 South Dakota State Class members regarding the performance and emission controls of their
15 vehicles.

16 2318. For example, Defendants included in the warranty booklets for some or all of the
17 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
18 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
19 from defects in material and workmanship which would cause it not to meet those standards.”

20 2319. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
21 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
22 Warranty.”

23 2320. The EPA requires vehicle manufacturers to provide a Performance Warranty with
24 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
25 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
26 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
27 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
28 emission control components are covered for the first eight years or 80,000 miles (whichever

1 comes first). These major emission control components subject to the longer warranty include the
2 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
3 device or computer.

4 2321. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
5 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
6 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
7 Design and Defect Warranty required by the EPA covers repair of emission control or emission
8 related parts, which fail to function or function improperly because of a defect in materials or
9 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
10 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
11 comes first.

12 2322. As manufacturers of light-duty vehicles, Defendants were required to provide these
13 warranties to purchasers or lessees of Class Vehicles.

14 2323. Defendants' warranties formed a basis of the bargain that was reached when
15 consumers purchased or leased Class Vehicles.

16 2324. Despite the existence of warranties, Defendants failed to inform South Dakota State
17 Class members that the Class Vehicles were defective and intentionally designed and manufactured
18 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
19 regulators and represented to consumers who purchased or leased them, and Defendants failed to
20 fix the defective emission components free of charge.

21 2325. Defendants breached the express warranty promising to repair and correct
22 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
23 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

24 2326. Affording Defendants a reasonable opportunity to cure their breach of written
25 warranties would be unnecessary and futile here.

26 2327. Furthermore, the limited warranty promising to repair and correct Defendants'
27 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
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1 insufficient to make South Dakota State Class members whole and because Defendants have failed
2 and/or have refused to adequately provide the promised remedies within a reasonable time.

3 2328. Accordingly, recovery by the South Dakota State Class members is not restricted to
4 the limited warranty promising to repair and correct Defendants' defect in materials and
5 workmanship, and they seek all remedies as allowed by law.

6 2329. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
7 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
8 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
9 material facts regarding the Class Vehicles. South Dakota State Class members were therefore
10 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

11 2330. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
12 through the limited remedy of repairing and correcting Defendants' defect in materials and
13 workmanship as many incidental and consequential damages have already been suffered because of
14 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
15 failure to provide such limited remedy within a reasonable time, and any limitation on South
16 Dakota State Class members' remedies would be insufficient to make them whole.

17 2331. Finally, because of Defendants' breach of warranty as set forth herein, South Dakota
18 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
19 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
20 owned or leased, and for such other incidental and consequential damages as allowed.

21 2332. Defendants were provided reasonable notice of these issues by way of a letter sent
22 by Plaintiffs as well as the regulators' investigations.

23 2333. As a direct and proximate result of Defendants' breach of express warranties, South
24 Dakota State Class members have been damaged in an amount to be determined at trial.

**SOUTH DAKOTA COUNT III:
Breach of Implied Warranty of Merchantability
S.D. Codified Laws §§ 57A-2-314 and 57-2A-212
(On Behalf of the South Dakota State Class)**

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2334. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2335. This count is brought on behalf of the South Dakota State Class against all Defendants.

2336. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under S.D. Codified Laws §§ 57A-104(1) and 57A-2A-103(1)(t), and “sellers” of motor vehicles under § 57A-104(1)(d).

2337. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under S.D. Codified Laws § 57A-2A-103(1)(p).

2338. The Class Vehicles are and were at all relevant times “goods” within the meaning of S.D. Codified Laws §§ 57A-2-105(1) and 57A-2A-103(1)(h).

2339. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to S.D. Codified Laws §§ 57A-2-314 and 57A-2A-212.

2340. These Class Vehicles, when sold or leased and at all times thereafter, were materially different from vehicles Defendants submitted for emissions testing and/or did not comply with emissions regulations when being driven in Sport Plus mode, and were therefore not fit for the ordinary purpose for which vehicles are used.

2341. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs as well as the regulators’ investigations.

2342. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, South Dakota State Class members have been damaged in an amount to be proven at trial.

**TENNESSEE COUNT I:
Violations of the Tennessee Consumer Protection Act
Tenn. Code Ann. § 47-18-101 et seq.
(On Behalf of the Tennessee State Class)**

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2343. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2344. This count is brought on behalf of the Tennessee State Class against all Defendants.

2345. Tennessee State Class members are “natural persons” and “consumers” within the meaning of Tenn. Code § 47-18-103(2). Defendants are “person[s]” within the meaning of Tenn. Code § 47-18-103(9).

2346. Defendants are engaged in “trade” or “commerce” or “consumer transactions” within the meaning Tenn. Code § 47-18-103(9).

2347. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “unfair or deceptive acts or practices affecting the conduct of any trade or commerce.” Tenn. Code § 47-18-104.

2348. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for emissions testing that were different from production vehicles and/or (b) falsely attesting that certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact did not.

2349. Tennessee State Class members had no way of discerning that Defendants’ representations were false and misleading because Tennessee State Class members did not have access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related hardware was extremely sophisticated technology.

2350. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a

1 transaction involving Class Vehicles has been supplied in accordance with a previous
2 representation when it has not.

3 2351. Defendants intentionally and knowingly misrepresented material facts regarding the
4 Class Vehicles with intent to mislead the Tennessee State Class.

5 2352. Defendants knew or should have known that their conduct violated the Tennessee
6 CPA.

7 2353. Defendants owed the Tennessee State Class a duty to disclose the illegality and
8 public health risks, the true nature of the Class Vehicles, because Defendants:

9 A. possessed exclusive knowledge that they were manufacturing, selling, and
10 distributing vehicles throughout the United States that did not perform as advertised;

11 B. intentionally concealed the foregoing from regulators and Tennessee State
12 Class members; and/or

13 C. made incomplete representations about the Class Vehicles' fuel economy
14 and emissions while purposefully withholding material facts that contradicted these
15 representations.

16 2354. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
17 consumption and emissions was material to the Tennessee State Class.

18 2355. Defendants' unfair or deceptive acts or practices were likely to and did in fact
19 deceive regulators and reasonable consumers, including the Tennessee State Class, about the true
20 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
21 brands, and the true value of the Class Vehicles.

22 2356. Defendants' violations present a continuing risk to the Tennessee State Class as well
23 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
24 public interest.

25 2357. Tennessee State Class members suffered ascertainable loss and actual damages as a
26 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
27 disclose material information. Defendants had an ongoing duty to all their customers to refrain
28 from unfair and deceptive practices under the Tennessee CPA. All owners of Class Vehicles

1 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
2 in the course of Defendants’ business.

3 2358. Pursuant to Tenn. Code § 47-18-109, the Tennessee State Class seeks an order
4 enjoining Defendants’ unfair and/or deceptive acts or practices, damages, treble damages for
5 willful and knowing violations, pursuant to § 47-18-109(a)(3), punitive damages, and attorneys’
6 fees, costs, and any other just and proper relief to the extent available under the Tennessee CPA.

7 **TENNESSEE COUNT II:**
8 **Breach of Express Warranty**
9 **Tenn. Code Ann. §§ 47-2-313 and 47-2A-210**
10 **(On Behalf of the Tennessee State Class)**

11 2359. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
12 fully set forth herein.

13 2360. This count is brought on behalf of the Tennessee State Class against all Defendants.

14 2361. Defendants are and were at all relevant times “merchant[s]” with respect to motor
15 vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and “sellers” of motor vehicles
16 under § 47-2-103(1)(d).

17 2362. With respect to leases, Defendants are and were at all relevant times “lessors” of
18 motor vehicles under Tenn. Code § 47-2A-103(1)(p).

19 2363. The Class Vehicles are and were at all relevant times “goods” within the meaning of
20 Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).

21 2364. In connection with the purchase or lease of each one of its new vehicles, Defendants
22 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
23 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

24 2365. Defendants also made numerous representations, descriptions, and promises to
25 Tennessee State Class members regarding the performance and emission controls of their vehicles.

26 2366. For example, Defendants included in the warranty booklets for some or all of the
27 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
28 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
from defects in material and workmanship which would cause it not to meet those standards.”

1 2367. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 2368. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 2369. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 2370. As manufacturers of light-duty vehicles, Defendants were required to provide these
22 warranties to purchasers or lessees of Class Vehicles.

23 2371. Defendants’ warranties formed a basis of the bargain that was reached when
24 consumers purchased or leased Class Vehicles.

25 2372. Despite the existence of warranties, Defendants failed to inform Tennessee State
26 Class members that the Class Vehicles were defective and intentionally designed and manufactured
27 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
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1 regulators and represented to consumers who purchased or leased them, and Defendants failed to
2 fix the defective emission components free of charge.

3 2373. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 2374. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 2375. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
10 insufficient to make Tennessee State Class members whole and because Defendants have failed
11 and/or have refused to adequately provide the promised remedies within a reasonable time.

12 2376. Accordingly, recovery by Tennessee State Class members is not restricted to the
13 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
14 and they seek all remedies as allowed by law.

15 2377. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
16 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
17 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
18 material facts regarding the Class Vehicles. Tennessee State Class members were therefore induced
19 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

20 2378. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
21 through the limited remedy of repairing and correcting Defendants' defect in materials and
22 workmanship as many incidental and consequential damages have already been suffered because of
23 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
24 failure to provide such limited remedy within a reasonable time, and any limitation on Tennessee
25 State Class members' remedies would be insufficient to make them whole.

26 2379. Finally, because of Defendants' breach of warranty as set forth herein, Tennessee
27 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
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1 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
2 owned or leased, and for such other incidental and consequential damages as allowed.

3 2380. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 2381. As a direct and proximate result of Defendants' breach of express warranties,
6 Tennessee State Class members have been damaged in an amount to be determined at trial.

7 **TENNESSEE COUNT III:**
8 **Breach of Implied Warranty of Merchantability**
9 **Tenn. Code Ann. §§ 47-2-314 and 47-2A-212**
10 **(On Behalf of the Tennessee State Class)**

11 2382. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 2383. This count is brought on behalf of the Tennessee State Class against all Defendants.

14 2384. Defendants are and were at all relevant times "merchant[s]" with respect to motor
15 vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and "sellers" of motor vehicles
16 under § 47-2-103(1)(d).

17 2385. With respect to leases, Defendants are and were at all relevant times "lessors" of
18 motor vehicles under Tenn. Code § 47-2A-103(1)(p).

19 2386. The Class Vehicles are and were at all relevant times "goods" within the meaning of
20 Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).

21 2387. A warranty that the Class Vehicles were in merchantable condition and fit for the
22 ordinary purpose for which vehicles are used is implied by law pursuant to Tenn. Code §§ 47-2-314
23 and 47-2A-212.

24 2388. These Class Vehicles, when sold or leased and at all times thereafter, were
25 materially different from vehicles Defendants submitted for emissions testing and/or did not
26 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
27 fit for the ordinary purpose for which vehicles are used.

28 2389. Defendants were provided reasonable notice of these issues by way of a letter sent
by Plaintiffs as well as the regulators' investigations.

1 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
2 did not.

3 2397. Plaintiffs and Texas State Class members had no way of discerning that Defendants'
4 representations were false and misleading because Texas State Class members did not have access
5 to Defendants' emissions certification test vehicles and Defendants' emissions-related hardware
6 was extremely sophisticated technology.

7 2398. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
8 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
9 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
10 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
11 transaction involving Class Vehicles has been supplied in accordance with a previous
12 representation when it has not.

13 2399. Defendants intentionally and knowingly misrepresented material facts regarding the
14 Class Vehicles with intent to mislead Plaintiffs and the Texas State Class.

15 2400. Defendants knew or should have known that their conduct violated the Texas
16 DTPA.

17 2401. Defendants owed Plaintiffs and the Texas State Class a duty to disclose the illegality
18 and public health risks, the true nature of the Class Vehicles, because Defendants:

- 19 A. possessed exclusive knowledge that they were manufacturing, selling, and
20 distributing vehicles throughout the United States that did not perform as advertised;
- 21 B. intentionally concealed the foregoing from regulators and Texas State Class
22 members; and/or
- 23 C. made incomplete representations about the Class Vehicles' fuel economy
24 and emissions while purposefully withholding material facts that contradicted these
25 representations.

26 2402. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
27 consumption and CO₂ emissions were material to the Texas State Class.
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1 2403. Defendants' unfair or deceptive acts or practices were likely to and did in fact
2 deceive regulators and reasonable consumers, including the Texas State Class, about the true
3 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
4 brands, and the true value of the Class Vehicles.

5 2404. Defendants' violations present a continuing risk to the Texas State Class as well as
6 to the general public. Defendants' unlawful acts and practices complained of herein affect the
7 public interest.

8 2405. Texas State Class members suffered ascertainable loss and actual damages as a
9 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
10 disclose material information. Defendants had an ongoing duty to all their customers to refrain
11 from unfair and deceptive practices under the Texas DTPA. All owners of Class Vehicles suffered
12 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
13 course of Defendants' business.

14 2406. Pursuant to Tex. Bus. & Com. Code § 17.50, the Texas State Class seeks an order
15 enjoining Defendants' unfair and/or deceptive acts or practices, damages, multiple damages for
16 knowing and intentional violations, pursuant to § 17.50(b)(1), punitive damages, and attorneys'
17 fees, costs, and any other just and proper relief available under the Texas DTPA.

18 2407. Pursuant to Tex. Bus. & Com. Code Ann. § 17.505, Plaintiffs sent notice letters to
19 Defendants. Additionally, all Defendants were provided notice of the issues raised in this count and
20 this Complaint by way of the investigations conducted by governmental regulators. The Texas
21 State Class seeks all damages and relief to which it is entitled.

22 **TEXAS COUNT II:**
23 **Breach of Express Warranty**
24 **Tex. Bus. & Com. Code §§ 2.313 and 2A.210**
25 **(On Behalf of the Texas State Class)**

26 2408. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
27 fully set forth herein.
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1 2409. Plaintiffs Rafael Daniels, Mauricio Pinto, and Oscar Sotelo II (for the purposes of
2 this count, “Plaintiffs”) bring this claim on behalf of themselves and the Texas State Class against
3 all Defendants.

4 2410. Defendants are and were at all relevant times “merchant[s]” with respect to motor
5 vehicles under Tex. Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and “sellers” of motor
6 vehicles under § 2.103(a)(4)

7 2411. With respect to leases, Defendants are and were at all relevant times “lessors” of
8 motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

9 2412. The Class Vehicles are and were at all relevant times “goods” within the meaning of
10 Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

11 2413. In connection with the purchase or lease of each one of its new vehicles, Defendants
12 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
13 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

14 2414. Defendants also made numerous representations, descriptions, and promises to
15 Texas State Class members regarding the performance and emission controls of their vehicles.

16 2415. For example, Defendants included in the warranty booklets for some or all of the
17 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
18 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
19 from defects in material and workmanship which would cause it not to meet those standards.”

20 2416. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
21 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
22 Warranty.”

23 2417. The EPA requires vehicle manufacturers to provide a Performance Warranty with
24 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
25 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
26 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
27 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
28 emission control components are covered for the first eight years or 80,000 miles (whichever

1 comes first). These major emission control components subject to the longer warranty include the
2 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
3 device or computer.

4 2418. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
5 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
6 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
7 Design and Defect Warranty required by the EPA covers repair of emission control or emission
8 related parts, which fail to function or function improperly because of a defect in materials or
9 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
10 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
11 comes first.

12 2419. As manufacturers of light-duty vehicles, Defendants were required to provide these
13 warranties to purchasers or lessees of Class Vehicles.

14 2420. Defendants' warranties formed a basis of the bargain that was reached when
15 consumers purchased or leased Class Vehicles.

16 2421. Despite the existence of warranties, Defendants failed to inform Texas State Class
17 members that the Class Vehicles were defective and intentionally designed and manufactured to
18 emit more pollution and achieve worse fuel economy on the road than what was disclosed to
19 regulators and represented to consumers who purchased or leased them, and Defendants failed to
20 fix the defective emission components free of charge.

21 2422. Defendants breached the express warranty promising to repair and correct
22 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
23 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

24 2423. Affording Defendants a reasonable opportunity to cure their breach of written
25 warranties would be unnecessary and futile here.

26 2424. Furthermore, the limited warranty promising to repair and correct Defendants'
27 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
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1 insufficient to make Texas State Class members whole and because Defendants have failed and/or
2 have refused to adequately provide the promised remedies within a reasonable time.

3 2425. Accordingly, recovery by Texas State Class members is not restricted to the limited
4 warranty promising to repair and correct Defendants' defect in materials and workmanship, and
5 they seek all remedies as allowed by law.

6 2426. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
7 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
8 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
9 material facts regarding the Class Vehicles. Texas State Class members were therefore induced to
10 purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

11 2427. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
12 through the limited remedy of repairing and correcting Defendants' defect in materials and
13 workmanship as many incidental and consequential damages have already been suffered because of
14 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
15 failure to provide such limited remedy within a reasonable time, and any limitation on Texas State
16 Class members' remedies would be insufficient to make them whole.

17 2428. Finally, because of Defendants' breach of warranty as set forth herein, Texas State
18 Class members assert, as additional and/or alternative remedies, the revocation of acceptance of the
19 goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or
20 leased, and for such other incidental and consequential damages as allowed.

21 2429. Defendants were provided reasonable notice of these issues by way of a letter sent
22 by Plaintiffs as well as the regulators' investigations.

23 2430. As a direct and proximate result of Defendants' breach of express warranties, Texas
24 State Class members have been damaged in an amount to be determined at trial.

**TEXAS COUNT III:
Breach of Implied Warranty of Merchantability
Tex. Bus. & Com. Code §§ 2.314 and 2A.212
(On Behalf of the Texas State Class)**

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2431. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2432. Plaintiffs Rafael Daniels, Mauricio Pinto, and Oscar Sotelo II (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Texas State Class against all Defendants.

2433. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Tex. Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and “sellers” of motor vehicles under § 2.103(a)(4)

2434. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

2435. The Class Vehicles are and were at all relevant times “goods” within the meaning of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

2436. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Tex. Bus. & Com. Code §§ 2.314 and 2A.212.

2437. These Class Vehicles, when sold or leased and at all times thereafter, were materially different from vehicles Defendants submitted for emissions testing and/or did not comply with emissions regulations when being driven in Sport Plus mode, and were therefore not fit for the ordinary purpose for which vehicles are used.

2438. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs as well as the regulators’ investigations.

2439. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Texas State Class members have been damaged in an amount to be proven at trial.

**UTAH COUNT I:
Violations of the Utah Consumer Sales Practices Act
Utah Code Ann. § 13-11-1 *et seq.*
(On Behalf of the Utah State Class)**

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2440. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2441. Plaintiff Andrew Kavan (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Utah State Class against all Defendants.

2442. Plaintiff and Utah State Class members are “persons” under the Utah Consumer Sales Practices Act (“Utah CSPA”), Utah Code § 13-11-3(5). The sales and leases of the Class Vehicles to Plaintiff and Utah State Class members were “consumer transactions” within the meaning of Utah Code § 13-11-3(2).

2443. Defendants are “supplier[s]” within the meaning of Utah Code § 13-11-3(6).

2444. The Utah CSPA makes unlawful any “deceptive act or practice by a supplier in connection with a consumer transaction.” Specifically, “a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not” or “(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not.” Utah Code § 13-11-4. “An unconscionable act or practice by a supplier in connection with a consumer transaction” also violates the Utah CSPA. Utah Code § 13-11-5.

2445. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for emissions testing that were different from production vehicles and/or (b) falsely attesting that certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact did not.

2446. Plaintiff and Utah State Class members had no way of discerning that Defendants’ representations were false and misleading because Plaintiff and Utah State Class members did not

1 have access to Defendants' emissions certification test vehicles and Defendants' emissions-related
2 hardware was extremely sophisticated technology.

3 2447. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
4 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
5 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
6 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
7 transaction involving Class Vehicles has been supplied in accordance with a previous
8 representation when it has not.

9 2448. Defendants intentionally and knowingly misrepresented material facts regarding the
10 Class Vehicles with intent to mislead Plaintiff and the Utah State Class.

11 2449. Defendants knew or should have known that their conduct violated the Utah CSPA.

12 2450. Defendants owed Plaintiff and the Utah State Class a duty to disclose the illegality
13 and public health risks, the true nature of the Class Vehicles, because Defendants:

14 A. possessed exclusive knowledge that they were manufacturing, selling, and
15 distributing vehicles throughout the United States that did not perform as advertised;

16 B. intentionally concealed the foregoing from regulators, Plaintiff and Utah
17 State Class members; and/or

18 C. made incomplete representations about the Class Vehicles' fuel economy
19 and emissions, while purposefully withholding material facts from Plaintiff and Utah State
20 Class members that contradicted these representations.

21 2451. Defendants' concealment of the true characteristics of the Class Vehicles' true fuel
22 consumption and emissions was material to Plaintiff and the Utah State Class.

23 2452. Defendants' unfair or deceptive acts or practices were likely to and did in fact
24 deceive regulators and reasonable consumers, including Plaintiff and the Utah State Class, about
25 the true environmental cleanliness and efficiency of the Class Vehicles, the quality of the
26 Defendants' brands, and the true value of the Class Vehicles.

1 2453. Defendants’ violations present a continuing risk to Plaintiff, Utah State Class
2 members, as well as to the general public. Defendants’ unlawful acts and practices complained of
3 herein affect the public interest.

4 2454. Plaintiff and Utah State Class members suffered ascertainable loss and actual
5 damages as a direct and proximate result of Defendants’ misrepresentations and concealment of
6 and failure to disclose material information. Defendants had an ongoing duty to all their customers
7 to refrain from unfair and deceptive practices under the Utah CSPA. All owners of Class Vehicles
8 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
9 in the course of Defendants’ business.

10 2455. Pursuant to Utah Code Ann. § 13-11-4, Plaintiff and the Utah State Class seeks
11 monetary relief against Defendants measured as the greater of (a) actual damages in an amount to
12 be determined at trial and (b) statutory damages in the amount of \$2,000 for each Utah State Class
13 member, reasonable attorneys’ fees, and any other just and proper relief available under the Utah
14 CSPA.

15 **UTAH COUNT II:**
16 **Breach of Express Warranty**
17 **Utah Code §§ 70A-2-313 and 70-2A-210**
18 **(On Behalf of the Utah State Class)**

19 2456. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
20 fully set forth herein.

21 2457. Plaintiff Andrew Kavan (for the purposes of this count, “Plaintiff”) brings this claim
22 on behalf of himself and the Utah State Class against all Defendants.

23 2458. Defendants are and were at all relevant times “merchant[s]” with respect to motor
24 vehicles under Utah Code § 70A-2-104(1) and 70A-2a-103(1)(t), and “sellers” of motor vehicles
25 under § 70A-2-103(1)(d).

26 2459. With respect to leases, Defendants are and were at all relevant times “lessors” of
27 motor vehicles under Utah Code § 70A-2a-103(1)(p).

28 2460. The Class Vehicles are and were at all relevant times “goods” within the meaning of
Utah Code §§ 70A-2-105(1) and 70A-2a-103(1)(h).

1 2461. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

4 2462. Defendants also made numerous representations, descriptions, and promises to
5 Plaintiff and Utah State Class members regarding the performance and emission controls of their
6 vehicles.

7 2463. For example, Defendants included in the warranty booklets for some or all of the
8 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
9 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
10 from defects in material and workmanship which would cause it not to meet those standards.”

11 2464. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
12 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
13 Warranty.”

14 2465. The EPA requires vehicle manufacturers to provide a Performance Warranty with
15 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
16 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
17 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
18 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
19 emission control components are covered for the first eight years or 80,000 miles (whichever
20 comes first). These major emission control components subject to the longer warranty include the
21 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
22 device or computer.

23 2466. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
24 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
25 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
26 Design and Defect Warranty required by the EPA covers repair of emission control or emission
27 related parts, which fail to function or function improperly because of a defect in materials or
28 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2467. As manufacturers of light-duty vehicles, Defendants were required to provide these
4 warranties to purchasers or lessees of Class Vehicles.

5 2468. Defendants' warranties formed a basis of the bargain that was reached when
6 consumers purchased or leased Class Vehicles.

7 2469. Despite the existence of warranties, Defendants failed to inform Plaintiff and Utah
8 State Class members that the Class Vehicles were intentionally designed and manufactured to emit
9 more to emit more emissions and achieve worse fuel and achieve worse fuel economy on the road
10 than what was disclosed to regulators and represented to consumers who purchased or leased them,
11 and failed to fix the defective emission components free of charge.

12 2470. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2471. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2472. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
19 insufficient to make Plaintiff and Utah State Class members whole and because Defendants have
20 failed and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2473. Accordingly, recovery by Plaintiff and Utah State Class members is not restricted to
22 the limited warranty promising to repair and correct Defendants' defect in materials and
23 workmanship, and they seek all remedies as allowed by law.

24 2474. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
25 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
26 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Plaintiff and Utah State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 2494. In the course of their business, Defendants concealed and suppressed material facts
2 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
3 emissions testing that were different from production vehicles and/or (b) falsely attesting that
4 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
5 did not.

6 2495. Vermont State Class members had no way of discerning that Defendants'
7 representations were false and misleading because Vermont State Class members did not have
8 access to Defendants' emissions certification test vehicles and Defendants' emissions-related
9 hardware was extremely sophisticated technology.

10 2496. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
11 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
12 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
13 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
14 transaction involving Class Vehicles has been supplied in accordance with a previous
15 representation when it has not.

16 2497. Defendants intentionally and knowingly misrepresented material facts regarding the
17 Class Vehicles with intent to mislead the Vermont State Class.

18 2498. Defendants knew or should have known that their conduct violated the Vermont
19 UTPA.

20 2499. Defendants owed the Vermont State Class a duty to disclose the illegality and public
21 health risks, the true nature of the Class Vehicles, because Defendants:

22 A. possessed exclusive knowledge that they were manufacturing, selling, and
23 distributing vehicles throughout the United States that did not perform as advertised;

24 B. intentionally concealed the foregoing from regulators and Vermont State
25 Class members; and/or

26 C. made incomplete representations about the Class Vehicles' fuel economy
27 and emissions while purposefully withholding material facts that contradicted these
28 representations.

1 2500. Defendants’ concealment of the true characteristics of the Class Vehicles’ fuel
2 consumption and emissions was material to the Vermont State Class.

3 2501. Defendants’ unfair or deceptive acts or practices were likely to and did in fact
4 deceive regulators and reasonable consumers, including the Vermont State Class, about the true
5 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants’
6 brands, and the true value of the Class Vehicles.

7 2502. Defendants’ violations present a continuing risk to the Vermont State Class as well
8 as to the general public. Defendants’ unlawful acts and practices complained of herein affect the
9 public interest.

10 2503. Vermont State Class members suffered ascertainable loss and actual damages as a
11 direct and proximate result of Defendants’ misrepresentations and concealment of and failure to
12 disclose material information. Defendants had an ongoing duty to all their customers to refrain
13 from unfair and deceptive practices under the Vermont UTPA. All owners of Class Vehicles
14 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
15 in the course of Defendants’ business.

16 2504. Pursuant to Vt. Stat. Tit. 9, § 2461(b), the Vermont State Class seeks an order
17 enjoining Defendants’ unfair and/or deceptive acts or practices, actual damages, damages up to
18 three times the consideration provided, punitive damages, attorneys’ fees, costs, and any other just
19 and proper relief available under the Vermont UTPA.

20 **VERMONT COUNT II:**
21 **Vermont Lemon Law**
22 **Vt. Stat. Tit. 9, § 4170 *et seq.***
23 **(On Behalf of the Vermont State Class)**

24 2505. Plaintiffs re-allege incorporate by reference all paragraphs as though fully set forth
25 herein.

26 2506. This count is brought on behalf of the Vermont State Class against all Defendants.

27 2507. The Vermont State Class own or lease “motor vehicles” within the meaning of Vt.
28 Stat. tit. 9, § 4171(6), because these vehicles were purchased, leased, or registered in Vermont by
Defendants and were registered in Vermont within 15 days of the date of purchase or lease. These

1 vehicles are not: (1) tractors, (2) motorized highway building equipment, (3) roadmaking
2 appliances, (4) snowmobiles, (5) motorcycles, (5) mopeds, (6) the living portion of recreation
3 vehicles, or (7) trucks with a gross vehicle weight over 10,000 pounds.

4 2508. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of Vt.
5 Stat. Tit. 9, § 4171(7) because it manufactures and assembles new motor vehicles or imports for
6 distribution through distributors of motor vehicles. It is also a “manufacturer” within the definition
7 of “distributor” and “factory branch.” *Id.*

8 2509. The Vermont State Class are “consumers” within the meaning of Vt. Stat. Tit. 9,
9 § 4171(2) because they bought or leased the Class Vehicles, were transferred their vehicles during
10 the duration the applicable warranty, or are otherwise entitled to the attendant terms of warranty.
11 They are not governmental entities or a business or commercial enterprise that registers or leases
12 three or more motor vehicles.

13 2510. The Class Vehicles did not conform to their express warranties during the term of
14 warranty because they were materially different from vehicles Defendants submitted for emissions
15 testing and/or did not comply with emissions regulations when being driven in Sport Plus mode.

16 2511. Defendants had actual knowledge of the conformities during the term of warranty.
17 But the nonconformities continued to exist throughout this term, as they have not been fixed.
18 Vermont State Class members are excused from notifying Defendants of the nonconformities
19 because it was already fully aware of the problem—as it intentionally created it—and any repair
20 attempt is futile.

21 2512. Defendants have had a reasonable opportunity to cure the nonconformities during
22 the relevant period because of its actual knowledge of, creation of, and attempt to conceal the
23 nonconformities, but has not done so as required under Vt. Stat. Tit. 9, § 4173.

24 2513. For vehicles purchased, the Vermont State Class demands a full refund of the
25 contract price and all credits and allowances for any trade-in or down payment, license fees, finance
26 charges, credit charges, registration fees and any similar charges and incidental and consequential
27 damages. Vt. Stat. Tit. 9, § 4173(e). For vehicles leased, the Vermont State Class demands the
28 aggregate deposit and rental payments previously paid, and any incidental and consequential

1 damages incurred. Vt. Stat. Tit. 9, § 4173(e), (i). The Vermont State Class rejects an offer of
2 replacement and will retain their vehicles until payment is tendered.

3 **VERMONT COUNT III:**
4 **Breach of Express Warranty**
5 **Vt. Stat. Tit. 9, §§ 2-313 and 2A-210**
6 **(On Behalf of the Vermont State Class)**

7 2514. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
8 fully set forth herein.

9 2515. This count is brought on behalf of the Vermont State Class against all Defendants.

10 2516. Defendants are and were at all relevant times “merchant[s]” with respect to motor
11 vehicles under Vt. Stat. Tit. 9A, §§ 2-104(1) and 2A-103(1)(t), and “sellers” of motor vehicles
12 under § 2-103(1)(d).

13 2517. With respect to leases, Defendants are and were at all relevant times “lessors” of
14 motor vehicles under Vt. Stat. Tit. 9A, § 2A-103(1)(p).

15 2518. The Class Vehicles are and were at all relevant times “goods” within the meaning of
16 Vt. Stat. Tit. 9A, §§ 2-105(1) and 2A-103(1)(h).

17 2519. In connection with the purchase or lease of each one of its new vehicles, Defendants
18 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
19 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

20 2520. Defendants also made numerous representations, descriptions, and promises to
21 Vermont State Class members regarding the performance and emission controls of their vehicles.

22 2521. For example, Defendants included in the warranty booklets for some or all of the
23 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
24 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
25 from defects in material and workmanship which would cause it not to meet those standards.”

26 2522. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
27 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
28 Warranty.”

1 2523. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 2524. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 2525. As manufacturers of light-duty vehicles, Defendants were required to provide these
19 warranties to purchasers or lessees of Class Vehicles.

20 2526. Defendants' warranties formed a basis of the bargain that was reached when
21 consumers purchased or leased Class Vehicles.

22 2527. Despite the existence of warranties, Defendants failed to inform Vermont State
23 Class members that the Class Vehicles were defective and intentionally designed and manufactured
24 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
25 regulators and represented to consumers who purchased or leased them, and Defendants failed to
26 fix the defective emission components free of charge.

1 2528. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 2529. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 2530. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
8 insufficient to make Vermont State Class members whole and because Defendants have failed
9 and/or have refused to adequately provide the promised remedies within a reasonable time.

10 2531. Accordingly, recovery by Vermont State Class members is not restricted to the
11 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
12 and they seek all remedies as allowed by law.

13 2532. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
14 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
15 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. Vermont State Class members were therefore induced
17 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 2533. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
19 through the limited remedy of repairing and correcting Defendants' defect in materials and
20 workmanship as many incidental and consequential damages have already been suffered because of
21 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
22 failure to provide such limited remedy within a reasonable time, and any limitation on Vermont
23 State Class members' remedies would be insufficient to make them whole.

24 2534. Finally, because of Defendants' breach of warranty as set forth herein, Vermont
25 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
26 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
27 owned or leased, and for such other incidental and consequential damages as allowed.
28

1 2535. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators' investigations.

3 2536. As a direct and proximate result of Defendants' breach of express warranties,
4 Vermont State Class members have been damaged in an amount to be determined at trial.

5 **VERMONT COUNT IV:**
6 **Breach of Implied Warranty of Merchantability**
7 **Vt. Stat. Tit. 9, §§ 2-314 and 2A-212**
8 **(On Behalf of the Vermont State Class)**

9 2537. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 2538. This count is brought on behalf of the Vermont State Class against all Defendants.

12 2539. Defendants are and were at all relevant times "merchant[s]" with respect to motor
13 vehicles under Vt. Stat. Tit. 9A, § 2-104(1) and 2A-103(1)(t), and "sellers" of motor vehicles under
14 § 2-103(1)(d).

15 2540. With respect to leases, Defendants are and were at all relevant times "lessors" of
16 motor vehicles under Vt. Stat. Tit. 9A, § 2A-103(1)(p).

17 2541. The Class Vehicles are and were at all relevant times "goods" within the meaning of
18 Vt. Stat. Tit. 9A, §§ 2-105(1) and 2A-103(1)(h).

19 2542. A warranty that the Class Vehicles were in merchantable condition and fit for the
20 ordinary purpose for which vehicles are used is implied by law pursuant to Vt. Stat. Tit. 9A,
21 §§ 2-314 and 2A-212.

22 2543. These Class Vehicles, when sold or leased and at all times thereafter, were
23 materially different from vehicles Defendants submitted for emissions testing and/or did not
24 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
25 fit for the ordinary purpose for which vehicles are used.

26 2544. Defendants were provided reasonable notice of these issues by way of a letter sent
27 by Plaintiffs as well as the regulators' investigations.
28

1 2545. As a direct and proximate result of Defendants’ breach of the implied warranty of
2 merchantability, Vermont State Class members have been damaged in an amount to be proven at
3 trial.

4 **VIRGINIA COUNT I:**
5 **Violations of the Virginia Consumer Protection Act**
6 **Va. Code Ann. § 59.1-196 *et seq.***
7 **(On Behalf of the Virginia State Class)**

8 2546. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

9 2547. This count is brought on behalf of the Virginia State Class against all Defendants.

10 2548. Defendants and the Virginia State Class are “persons” within the meaning of Va.
11 Code § 59.1-198.

12 2549. Defendants are “supplier[s]” within the meaning of Va. Code § 59.1-198.

13 2550. The Virginia Consumer Protection Act (“Virginia CPA”) makes unlawful
14 “fraudulent acts or practices.” Va. Code § 59.1-200(A).

15 2551. In the course of their business, Defendants concealed and suppressed material facts
16 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
17 emissions testing that were different from production vehicles and/or (b) falsely attesting that
18 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
19 did not.

20 2552. Virginia State Class members had no way of discerning that Defendants’
21 representations were false and misleading because Virginia State Class members did not have
22 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
23 hardware was extremely sophisticated technology.

24 2553. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
25 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
26 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
27 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
28 transaction involving Class Vehicles has been supplied in accordance with a previous
representation when it has not.

1 2554. Defendants intentionally and knowingly misrepresented material facts regarding the
2 Class Vehicles with intent to mislead the Virginia State Class.

3 2555. Defendants knew or should have known that their conduct violated the Virginia
4 CPA.

5 2556. Defendants owed the Virginia State Class a duty to disclose the illegality and public
6 health risks, the true nature of the Class Vehicles, because Defendants:

7 A. possessed exclusive knowledge that they were manufacturing, selling, and
8 distributing vehicles throughout the United States that did not perform as advertised;

9 B. intentionally concealed the foregoing from regulators and Virginia State
10 Class members; and/or

11 C. made incomplete representations about the Class Vehicles' fuel economy
12 and emissions while purposefully withholding material facts that contradicted these
13 representations.

14 2557. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
15 consumption and emissions were material to the Virginia State Class.

16 2558. Defendants' unfair or deceptive acts or practices were likely to and did in fact
17 deceive regulators and reasonable consumers, including the Virginia State Class, about the true
18 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
19 brands, and the true value of the Class Vehicles.

20 2559. Defendants' violations present a continuing risk to the Virginia State Class as well
21 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
22 public interest.

23 2560. Virginia State Class members suffered ascertainable loss and actual damages as a
24 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
25 disclose material information. Defendants had an ongoing duty to all their customers to refrain
26 from unfair and deceptive practices under the Virginia CPA. All owners of Class Vehicles suffered
27 ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the
28 course of Defendants' business.

1 2570. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
2 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
3 Warranty.”

4 2571. The EPA requires vehicle manufacturers to provide a Performance Warranty with
5 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
6 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
7 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
8 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
9 emission control components are covered for the first eight years or 80,000 miles (whichever
10 comes first). These major emission control components subject to the longer warranty include the
11 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
12 device or computer.

13 2572. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
14 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
15 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
16 Design and Defect Warranty required by the EPA covers repair of emission control or emission
17 related parts, which fail to function or function improperly because of a defect in materials or
18 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
19 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
20 comes first.

21 2573. As manufacturers of light-duty vehicles, Defendants were required to provide these
22 warranties to purchasers or lessees of Class Vehicles.

23 2574. Defendants’ warranties formed a basis of the bargain that was reached when
24 consumers purchased or leased Class Vehicles.

25 2575. Despite the existence of warranties, Defendants failed to inform Virginia State Class
26 members that the Class Vehicles were defective and intentionally designed and manufactured to
27 emit more pollution and achieve worse fuel economy on the road than what was disclosed to
28

1 regulators and represented to consumers who purchased or leased them, and Defendants failed to
2 fix the defective emission components free of charge.

3 2576. Defendants breached the express warranty promising to repair and correct
4 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
5 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

6 2577. Affording Defendants a reasonable opportunity to cure their breach of written
7 warranties would be unnecessary and futile here.

8 2578. Furthermore, the limited warranty promising to repair and correct Defendants'
9 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
10 insufficient to make Virginia State Class members whole and because Defendants have failed
11 and/or have refused to adequately provide the promised remedies within a reasonable time.

12 2579. Accordingly, recovery by the Virginia State Class members is not restricted to the
13 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
14 and they seek all remedies as allowed by law.

15 2580. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
16 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
17 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
18 material facts regarding the Class Vehicles. Virginia State Class members were therefore induced
19 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

20 2581. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
21 through the limited remedy of repairing and correcting Defendants' defect in materials and
22 workmanship as many incidental and consequential damages have already been suffered because of
23 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
24 failure to provide such limited remedy within a reasonable time, and any limitation on Virginia
25 State Class members' remedies would be insufficient to make them whole.

26 2582. Finally, because of Defendants' breach of warranty as set forth herein, Virginia
27 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
28

1 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
2 owned or leased, and for such other incidental and consequential damages as allowed.

3 2583. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 2584. As a direct and proximate result of Defendants' breach of express warranties,
6 Virginia State Class members have been damaged in an amount to be determined at trial.

7 **VIRGINIA COUNT III:**
8 **Breach of Implied Warranty of Merchantability**
9 **Va. Code §§ 8.2-314 and 8.2A-212**
10 **(On Behalf of the Virginia State Class)**

11 2585. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 2586. This count is brought on behalf of the Virginia State Class against all Defendants.

14 2587. Defendants are and were at all relevant times "merchant[s]" with respect to motor
15 vehicles under Va. Code §§ 8.2-104(1) and 8.2A-103(1)(t), and "sellers" of motor vehicles under
16 § 8.2-103(1)(d).

17 2588. With respect to leases, Defendants are and were at all relevant times "lessors" of
18 motor vehicles under Va. Code § 8.2A-103(1)(p).

19 2589. The Class Vehicles are and were at all relevant times "goods" within the meaning of
20 Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).

21 2590. A warranty that the Class Vehicles were in merchantable condition and fit for the
22 ordinary purpose for which vehicles are used is implied by law pursuant to Va. Code §§ 8.2-314
23 and 8.2A-212.

24 2591. These Class Vehicles, when sold or leased and at all times thereafter, were
25 materially different from vehicles Defendants submitted for emissions testing and/or did not
26 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
27 fit for the ordinary purpose for which vehicles are used.

28 2592. Defendants were provided reasonable notice of these issues by way of a letter sent
by Plaintiffs as well as the regulators' investigations.

1 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
2 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
3 transaction involving Class Vehicles has been supplied in accordance with a previous
4 representation when it has not.

5 2602. Defendants intentionally and knowingly misrepresented material facts regarding the
6 Class Vehicles with intent to mislead the Washington State Class.

7 2603. Defendants knew or should have known that their conduct violated the Washington
8 CPA.

9 2604. Defendants owed the Washington State Class a duty to disclose the illegality and
10 public health risks, the true nature of the Class Vehicles, because Defendants:

11 A. possessed exclusive knowledge that they were manufacturing, selling, and
12 distributing vehicles throughout the United States that did not perform as advertised;

13 B. intentionally concealed the foregoing from regulators and Washington State
14 Class members; and/or

15 C. made incomplete representations about the Class Vehicles' fuel economy
16 and emissions while purposefully withholding material facts that contradicted these
17 representations.

18 2605. Defendants' concealment of the Class Vehicles' true fuel consumption and
19 emissions were material to the Washington State Class.

20 2606. Defendants' unfair or deceptive acts or practices were likely to and did in fact
21 deceive regulators and reasonable consumers, including the Washington State Class, about the true
22 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
23 brands, and the true value of the Class Vehicles.

24 2607. Defendants' violations present a continuing risk to the Washington State Class as
25 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
26 the public interest.

27 2608. Washington State Class members suffered ascertainable loss and actual damages as
28 a direct and proximate result of Defendants' misrepresentations and concealment of and failure to

1 disclose material information. Defendants had an ongoing duty to all their customers to refrain
2 from unfair and deceptive practices under the Washington CPA. All owners of Class Vehicles
3 suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made
4 in the course of Defendants’ business.

5 2609. Pursuant to Wash. Rev. Code § 19.86.090, the Washington State Class seeks an
6 order enjoining Defendants’ unfair and/or deceptive acts or practices, damages, punitive damages,
7 and attorneys’ fees, costs, and any other just and proper relief available under the Washington CPA.
8 Because Defendants’ actions were willful and knowing, Washington State Class members’
9 damages should be trebled.

10 **WASHINGTON STATE COUNT II:**
11 **Washington Lemon Law**
12 **Wash. Rev. Code § 19.118.005 *et seq.***
13 **(On Behalf of the Washington State Class)**

14 2610. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
15 fully set forth herein.

16 2611. This count is brought on behalf of the Washington State Class against all
17 Defendants.

18 2612. The Washington State Class own or lease “new motor vehicles” within the meaning
19 of Wash. Rev. Code § 19.118.021(12), because these vehicles are self-propelled primarily designed
20 for the transportation of persons or property over the public highways and were originally
21 purchased or leased at retail from a new motor vehicle dealer or leasing company in Washington.
22 These vehicles do not include vehicles purchased or leased by a business as part of a fleet of ten or
23 more vehicles at one time or under a single purchase or lease agreement or those portions of a motor
24 home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space.

25 2613. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
26 Wash. Rev. Code § 19.118.021(8) because it is in the business of constructing or assembling new
27 motor vehicles or is engaged in the business of importing new motor vehicles into the United States
28 for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers.

1 2614. The Washington State Class are “consumers” within the meaning of Wash. Rev.
2 Code § 19.118.021(4) because they entered into an agreement or contract for the transfer, lease, or
3 purchase of a new motor vehicle, other than for purposes of resale or sublease, during the eligibility
4 period as defined by Wash. Rev. Code § 19.118.021(6).

5 2615. The Class Vehicles did not conform to their warranties as defined by Wash. Rev.
6 Code § 19.118.021(22), during the “eligibility period,” defined by Wash. Rev. Code
7 § 19.118.021(6), or the coverage period under the applicable written warranty because they
8 contained, among other defects described herein, a program designed to circumvent state and
9 federal emissions standards and inflate the fuel economy thereon. Wash. Rev. Code § 19.118.031.
10 This program did in fact circumvent emissions standards and overstate fuel economy and
11 substantially impaired the use and market value of their motor vehicles.

12 2616. Defendants had actual knowledge of the conformities during warranty periods. But
13 the nonconformities continued to exist throughout this term, as they have not been fixed.
14 Washington State Class members are excused from notifying Defendants of the nonconformities
15 because it was already fully aware of the problem—as it intentionally created it—and any repair
16 attempt is futile.

17 2617. Defendants have had a reasonable opportunity to cure the nonconformities because
18 of its actual knowledge of, creation of, and attempt to conceal the nonconformities, but has not done
19 so as required under Wash. Rev. Code § 19.118.031.

20 2618. For vehicles purchased, the Washington State Class demands a full refund of the
21 contract price, all collateral charges, and incidental costs. Wash. Rev. Code § 19.118.041(1)(b). For
22 vehicles leased, the Washington State Class demands all payments made under the lease including
23 but not limited to all lease payments, trade-in value or inception payment, security deposit, and all
24 collateral charges and incidental costs. The consumer is also relieved of any future obligation to the
25 lessor or lienholder. The Washington State Class rejects an offer of replacement and will retain
26 their vehicles until payment is tendered.

**WASHINGTON STATE COUNT III:
Breach of Express Warranty
Wash Rev. Code §§ 62A.2-313 and 62A.2A-210
(On Behalf of the Washington State Class)**

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3
4 2619. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
5 fully set forth herein.

6 2620. This count is brought on behalf of the Washington State Class against all
7 Defendants.

8 2621. Defendants are and were at all relevant times “merchant[s]” with respect to motor
9 vehicles under Wash. Rev. Code §§ 62A.2-104(1) and 62A.2A-103(1)(t), and “sellers” of motor
10 vehicles under § 2.103(a)(4).

11 2622. With respect to leases, Defendants are and were at all relevant times “lessors” of
12 motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).

13 2623. The Class Vehicles are and were at all relevant times “goods” within the meaning of
14 Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).

15 2624. In connection with the purchase or lease of each one of its new vehicles, Defendants
16 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
17 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

18 2625. Defendants also made numerous representations, descriptions, and promises to
19 Washington State Class members regarding the performance and emission controls of their
20 vehicles.

21 2626. For example, Defendants included in the warranty booklets for some or all of the
22 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
23 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
24 from defects in material and workmanship which would cause it not to meet those standards.”

25 2627. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
26 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
27 Warranty.”
28

1 2628. The EPA requires vehicle manufacturers to provide a Performance Warranty with
2 respect to the vehicles' emission systems. Thus, Defendants also provide an express warranty for
3 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
4 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
5 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
6 emission control components are covered for the first eight years or 80,000 miles (whichever
7 comes first). These major emission control components subject to the longer warranty include the
8 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
9 device or computer.

10 2629. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
11 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
12 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
13 Design and Defect Warranty required by the EPA covers repair of emission control or emission
14 related parts, which fail to function or function improperly because of a defect in materials or
15 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
16 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
17 comes first.

18 2630. As manufacturers of light-duty vehicles, Defendants were required to provide these
19 warranties to purchasers or lessees of Class Vehicles.

20 2631. Defendants' warranties formed a basis of the bargain that was reached when
21 consumers purchased or leased Class Vehicles.

22 2632. Despite the existence of warranties, Defendants failed to inform Washington State
23 Class members that the Class Vehicles were defective and intentionally designed and manufactured
24 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
25 regulators and represented to consumers who purchased or leased them, and Defendants failed to
26 fix the defective emission components free of charge.

1 2633. Defendants breached the express warranty promising to repair and correct
2 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
3 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

4 2634. Affording Defendants a reasonable opportunity to cure their breach of written
5 warranties would be unnecessary and futile here.

6 2635. Furthermore, the limited warranty promising to repair and correct Defendants'
7 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
8 insufficient to make Washington State Class members whole and because Defendants have failed
9 and/or have refused to adequately provide the promised remedies within a reasonable time.

10 2636. Accordingly, recovery by the Washington State Class members is not restricted to
11 the limited warranty promising to repair and correct Defendants' defect in materials and
12 workmanship, and they seek all remedies as allowed by law.

13 2637. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
14 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
15 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
16 material facts regarding the Class Vehicles. Washington State Class members were therefore
17 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

18 2638. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
19 through the limited remedy of repairing and correcting Defendants' defect in materials and
20 workmanship as many incidental and consequential damages have already been suffered because of
21 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
22 failure to provide such limited remedy within a reasonable time, and any limitation on Washington
23 State Class members' remedies would be insufficient to make them whole.

24 2639. Finally, because of Defendants' breach of warranty as set forth herein, Washington
25 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
26 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
27 owned or leased, and for such other incidental and consequential damages as allowed.

28

1 2640. Defendants were provided reasonable notice of these issues by way of a letter sent
2 by Plaintiffs as well as the regulators' investigations.

3 2641. As a direct and proximate result of Defendants' breach of express warranties,
4 Washington State Class members have been damaged in an amount to be determined at trial.

5 **WASHINGTON STATE COUNT IV:**
6 **Breach of Implied Warranty of Merchantability**
7 **Wash Rev. Code §§ 62A.2-314 and 62A.2A-212**
8 **(On Behalf of the Washington State Class)**

9 2642. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
10 forth herein.

11 2643. This count is brought on behalf of the Washington State Class against all
12 Defendants.

13 2644. Defendants are and were at all relevant times "merchant[s]" with respect to motor
14 vehicles under Wash. Rev. Code § 62A.2-104(1) and 62A.2A-103(1)(t), and "sellers" of motor
15 vehicles under § 2.103(a)(4).

16 2645. With respect to leases, Defendants are and were at all relevant times "lessors" of
17 motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).

18 2646. The Class Vehicles are and were at all relevant times "goods" within the meaning of
19 Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).

20 2647. A warranty that the Class Vehicles were in merchantable condition and fit for the
21 ordinary purpose for which vehicles are used is implied by law pursuant to Wash. Rev. Code
22 §§ 62A.2-314 and 62A.2A-212.

23 2648. These Class Vehicles, when sold or leased and at all times thereafter, were
24 materially different from vehicles Defendants submitted for emissions testing and/or did not
25 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
26 fit for the ordinary purpose for which vehicles are used.

27 2649. Defendants were provided reasonable notice of these issues by way of a letter sent
28 by Plaintiffs as well as the regulators' investigations.

1 2658. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
2 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
3 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
4 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
5 transaction involving Class Vehicles has been supplied in accordance with a previous
6 representation when it has not.

7 2659. Defendants intentionally and knowingly misrepresented material facts regarding the
8 Class Vehicles with intent to mislead the West Virginia State Class.

9 2660. Defendants knew or should have known that their conduct violated the West
10 Virginia CCPA.

11 2661. Defendants owed the West Virginia State Class a duty to disclose the illegality and
12 public health risks, the true nature of the Class Vehicles, because Defendants:

13 A. possessed exclusive knowledge that they were manufacturing, selling, and
14 distributing vehicles throughout the United States that did not perform as advertised;

15 B. intentionally concealed the foregoing from regulators and West Virginia
16 State Class members; and/or

17 C. made incomplete representations about the Class Vehicles' fuel economy
18 and emissions while purposefully withholding material facts that contradicted these
19 representations.

20 2662. Defendants' concealment of the true characteristics of the Class Vehicles' true fuel
21 consumption and emissions were material to the West Virginia State Class.

22 2663. Defendants' unfair or deceptive acts or practices were likely to and did in fact
23 deceive regulators and reasonable consumers, including the West Virginia State Class, about the
24 true environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
25 brands, and the true value of the Class Vehicles.

26 2664. Defendants' violations present a continuing risk to the West Virginia State Class as
27 well as to the general public. Defendants' unlawful acts and practices complained of herein affect
28 the public interest.

1 2674. Defendants also made numerous representations, descriptions, and promises to
2 West Virginia State Class members regarding the performance and emission controls of their
3 vehicles.

4 2675. For example, Defendants included in the warranty booklets for some or all of the
5 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
6 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
7 from defects in material and workmanship which would cause it not to meet those standards.”

8 2676. The Clean Air Act requires manufacturers of light-duty vehicles to provide two
9 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
10 Warranty.”

11 2677. The EPA requires vehicle manufacturers to provide a Performance Warranty with
12 respect to the vehicles’ emissions systems. Thus, Defendants also provide an express warranty for
13 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
14 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
15 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
16 emission control components are covered for the first eight years or 80,000 miles (whichever
17 comes first). These major emission control components subject to the longer warranty include the
18 catalytic converters, the electronic emissions control unit (ECU), and the onboard emissions
19 diagnostic device or computer.

20 2678. The EPA requires vehicle manufacturers to issue Defect Warranties with respect to
21 their vehicles’ emissions systems. Thus, Defendants also provide an express warranty to its
22 vehicles through a Federal Emissions Control System Defect Warranty. The Design and Defect
23 Warranty required by the EPA covers repair of emission control or emission related parts, which
24 fail to function or function improperly due to a defect in materials or workmanship. This warranty
25 provides protection for two years or 24,000 miles, whichever comes first, or, for the major
26 emissions control components, for eight years or 80,000 miles, whichever comes first.

1 2679. As a manufacturer of light-duty vehicles, Defendants were required to provide these
2 warranties to West Virginia State Class members. Defendants' warranties formed a basis of the
3 bargain that was reached when consumers purchased or leased Class Vehicles.

4 2680. The emissions defects in the Class Vehicles existed from the date of the original sale
5 of the new vehicle to the consumer but could not be detected by a reasonable consumer exercising
6 reasonable care and diligence. Therefore, applicable express warranties for the Class Vehicles
7 containing the defects described herein would be extended. Further extension of the express
8 warranty period is now required because of the difficulties the Defendants may have in executing a
9 massive recall Class Vehicles in the United States.

10 2681. Pursuant to W.Va. Code §§ 46A-6A-3(a) and 5(c), Plaintiffs have sent notice letters
11 to Defendants. Additionally, Defendants are on notice of the issues raised in this count and this
12 Complaint by way of investigations conducted by governmental regulators.

13 2682. As a direct and proximate result of the Defendants' breaches of their duties under
14 West Virginia's Lemon Law, West Virginia State Class members received goods whose defect
15 substantially impairs their value. The West Virginia State Class has been damaged by the
16 diminished market value of the vehicles along with the compromised functioning and/or non-use of
17 their Class Vehicles.

18 2683. Defendants have a duty under § 46A-6A-3 to make all repairs necessary to correct
19 the defect herein described to bring the Class Vehicles into conformity with all written warranties.
20 In the event that Defendants cannot affect such repairs, they have a duty to replace each Class
21 Vehicle with a comparable new motor vehicle that conforms to the warranty.

22 2684. As a result of Defendants' breaches, the West Virginia State Class are entitled to the
23 following:

- 24 A. Revocation of acceptance and refund of the purchase price, including, but
25 not limited to, sales tax, license and registration fees, and other reasonable expenses
26 incurred for the purchase of the new motor vehicle, or if there be no such revocation of
27 acceptance, damages for diminished value of the motor vehicle;

1 B. Damages for the cost of repairs reasonably required to conform the motor
2 vehicle to the express warranty;

3 C. Damages for the loss of use, annoyance or inconvenience resulting from the
4 nonconformity, including, but not limited to, reasonable expenses incurred for replacement
5 transportation during any period when the vehicle is out of service by reason of the
6 nonconformity or by reason of repair; and

7 D. Reasonable attorney fees.

8 **WEST VIRGINIA COUNT III:**
9 **Breach of Express Warranty**
10 **W. Va. Code §§ 46-2-313 and 46-2A-210**
11 **(On Behalf of the West Virginia State Class)**

12 2685. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
13 fully set forth herein.

14 2686. This count is brought on behalf of the West Virginia State Class against all
15 Defendants.

16 2687. Defendants are and were at all relevant times “merchant[s]” with respect to motor
17 vehicles under W. Va. Code § 46-2-104(1) and 46-2A-103(1)(t), and “sellers” of motor vehicles
18 under § 46-2-103(1)(d).

19 2688. With respect to leases, Defendants are and were at all relevant times “lessors” of
20 motor vehicles under W. Va. Code § 46-2A-103(1)(p).

21 2689. The Class Vehicles are and were at all relevant times “goods” within the meaning of
22 W. Va. Code §§ 46-2-105(1) and 46-2A-103(1)(h).

23 2690. In connection with the purchase or lease of each one of its new vehicles, Defendants
24 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
25 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

26 2691. Defendants also made numerous representations, descriptions, and promises to
27 West Virginia State Class members regarding the performance and emission controls of their
28 vehicles.

1 2692. For example, Defendants included in the warranty booklets for some or all of the
2 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
3 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
4 from defects in material and workmanship which would cause it not to meet those standards.”

5 2693. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
6 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
7 Warranty.”

8 2694. The EPA requires vehicle manufacturers to provide a Performance Warranty with
9 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
10 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
11 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
12 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
13 emission control components are covered for the first eight years or 80,000 miles (whichever
14 comes first). These major emission control components subject to the longer warranty include the
15 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
16 device or computer.

17 2695. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
18 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
19 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
20 Design and Defect Warranty required by the EPA covers repair of emission control or emission
21 related parts, which fail to function or function improperly because of a defect in materials or
22 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
23 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
24 comes first.

25 2696. As manufacturers of light-duty vehicles, Defendants were required to provide these
26 warranties to purchasers or lessees of Class Vehicles.

27 2697. Defendants’ warranties formed a basis of the bargain that was reached when
28 consumers purchased or leased Class Vehicles.

1 2698. Despite the existence of warranties, Defendants failed to inform West Virginia State
2 Class members that the Class Vehicles were defective and intentionally designed and manufactured
3 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
4 regulators and represented to consumers who purchased or leased them, and Defendants failed to
5 fix the defective emission components free of charge.

6 2699. Defendants breached the express warranty promising to repair and correct
7 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
8 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

9 2700. Affording Defendants a reasonable opportunity to cure their breach of written
10 warranties would be unnecessary and futile here.

11 2701. Furthermore, the limited warranty promising to repair and correct Defendants'
12 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
13 insufficient to make West Virginia State Class members whole and because Defendants have failed
14 and/or have refused to adequately provide the promised remedies within a reasonable time.

15 2702. Accordingly, recovery by West Virginia State Class members is not restricted to the
16 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
17 and they seek all remedies as allowed by law.

18 2703. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
19 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
20 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
21 material facts regarding the Class Vehicles. West Virginia State Class members were therefore
22 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

23 2704. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
24 through the limited remedy of repairing and correcting Defendants' defect in materials and
25 workmanship as many incidental and consequential damages have already been suffered because of
26 Defendants' fraudulent conduct as alleged herein, and because of its failure and/or continued
27 failure to provide such limited remedy within a reasonable time, and any limitation on West
28 Virginia State Class members' remedies would be insufficient to make them whole.

1 2705. Finally, because of Defendants’ breach of warranty as set forth herein, West
2 Virginia State Class members assert, as additional and/or alternative remedies, the revocation of
3 acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles
4 currently owned or leased, and for such other incidental and consequential damages as allowed.

5 2706. Defendants were provided reasonable notice of these issues by way of a letter sent
6 by Plaintiffs as well as the regulators’ investigations.

7 2707. As a direct and proximate result of Defendants’ breach of express warranties, West
8 Virginia State Class members have been damaged in an amount to be determined at trial.

9 **WEST VIRGINIA COUNT IV:**
10 **Breach of Implied Warranty of Merchantability**
11 **W. Va. Code §§ 46-2-314 and 46-2A-212**
12 **(On Behalf of the West Virginia State Class)**

13 2708. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
14 forth herein.

15 2709. This count is brought on behalf of the West Virginia State Class against all
16 Defendants.

17 2710. Defendants are and were at all relevant times “merchant[s]” with respect to motor
18 vehicles under W. Va. Code §§ 46-2-104(1) and 46-2A-103(1)(t), and “sellers” of motor vehicles
19 under § 46-2-103(1)(d).

20 2711. With respect to leases, Defendants are and were at all relevant times “lessors” of
21 motor vehicles under W. Va. Code § 46-2A-103(1)(p).

22 2712. The Class Vehicles are and were at all relevant times “goods” within the meaning of
23 W. Va. Code §§ 46-2-105(1) and 46-2A-103(1)(h).

24 2713. A warranty that the Class Vehicles were in merchantable condition and fit for the
25 ordinary purpose for which vehicles are used is implied by law pursuant to W. Va. Code
26 §§ 46-2-314 and 46-2A-212.

27 2714. These Class Vehicles, when sold or leased and at all times thereafter, were
28 materially different from vehicles Defendants submitted for emissions testing and/or did not

1 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
2 fit for the ordinary purpose for which vehicles are used.

3 2715. Defendants were provided reasonable notice of these issues by way of a letter sent
4 by Plaintiffs as well as the regulators' investigations.

5 2716. As a direct and proximate result of Defendants' breach of the implied warranty of
6 merchantability, West Virginia State Class members have been damaged in an amount to be proven
7 at trial.

8 **WISCONSIN COUNT I:**
9 **Violations of the Wisconsin Deceptive Trade Practices Act**
10 **Wis. Stat. § 100.18 *et seq.***
11 **(On Behalf of the Wisconsin State Class)**

12 2717. Plaintiffs incorporate by reference all allegations in this Complaint as though fully
13 set forth herein.

14 2718. This count is brought on behalf of the Wisconsin State Class against all Defendants.

15 2719. Wisconsin State Class members are "persons" and members of "the public" under
16 the Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA"), Wis. Stat. § 100.18(1).
17 Wisconsin State Class members purchased or leased one or more Class Vehicles.

18 2720. Defendants are "person[s], firm[s], corporation[s] or association[s]" within the
19 meaning of Wis. Stat. § 100.18(1).

20 2721. The Wisconsin DTPA makes unlawful any "representation or statement of fact
21 which is untrue, deceptive or misleading." Wis. Stat. § 100.18(1).

22 2722. In the course of their business, Defendants concealed and suppressed material facts
23 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
24 emissions testing that were different from production vehicles and/or (b) falsely attesting that
25 certain vehicles' high performance (Sport Plus) mode could pass emissions tests when they in fact
26 did not.

27 2723. Wisconsin State Class members had no way of discerning that Defendants'
28 representations were false and misleading because Wisconsin State Class members did not have

1 access to Defendants' emissions certification test vehicles and Defendants' emissions-related
2 hardware was extremely sophisticated technology.

3 2724. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
4 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
5 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
6 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a
7 transaction involving Class Vehicles has been supplied in accordance with a previous
8 representation when it has not.

9 2725. Defendants intentionally and knowingly misrepresented material facts regarding the
10 Class Vehicles with intent to mislead the Wisconsin State Class.

11 2726. Defendants knew or should have known that their conduct violated the Wisconsin
12 DTPA.

13 2727. Defendants owed the Wisconsin State Class a duty to disclose the illegality and
14 public health risks, the true nature of the Class Vehicles, because Defendants:

15 A. possessed exclusive knowledge that they were manufacturing, selling, and
16 distributing vehicles throughout the United States that did not perform as advertised;

17 B. intentionally concealed the foregoing from regulators and Wisconsin State
18 Class members; and/or

19 C. made incomplete representations about the Class Vehicles' fuel economy
20 and emissions while purposefully withholding material facts that contradicted these
21 representations.

22 2728. Defendants' concealment of the true characteristics of the Class Vehicles' true fuel
23 consumption and emissions were material to the Wisconsin State Class.

24 2729. Defendants' unfair or deceptive acts or practices were likely to and did in fact
25 deceive regulators and reasonable consumers, including the Wisconsin State Class, about the true
26 environmental cleanliness and efficiency of the Class Vehicles, the quality of the Defendants'
27 brands, and the true value of the Class Vehicles.

1 2739. In connection with the purchase or lease of each one of its new vehicles, Defendants
2 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
3 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

4 2740. Defendants also made numerous representations, descriptions, and promises to
5 Wisconsin State Class members regarding the performance and emission controls of their vehicles.

6 2741. For example, Defendants included in the warranty booklets for some or all of the
7 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
8 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
9 from defects in material and workmanship which would cause it not to meet those standards.”

10 2742. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
11 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
12 Warranty.”

13 2743. The EPA requires vehicle manufacturers to provide a Performance Warranty with
14 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
15 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
16 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
17 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
18 emission control components are covered for the first eight years or 80,000 miles (whichever
19 comes first). These major emission control components subject to the longer warranty include the
20 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
21 device or computer.

22 2744. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
23 with respect to their vehicles’ emission systems. Thus, Defendants also provide an express
24 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
25 Design and Defect Warranty required by the EPA covers repair of emission control or emission
26 related parts, which fail to function or function improperly because of a defect in materials or
27 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
28

1 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
2 comes first.

3 2745. As manufacturers of light-duty vehicles, Defendants were required to provide these
4 warranties to purchasers or lessees of Class Vehicles.

5 2746. Defendants' warranties formed a basis of the bargain that was reached when
6 consumers purchased or leased Class Vehicles.

7 2747. Despite the existence of warranties, Defendants failed to inform Wisconsin State
8 Class members that the Class Vehicles were defective and intentionally designed and manufactured
9 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
10 regulators and represented to consumers who purchased or leased them, and Defendants failed to
11 fix the defective emission components free of charge.

12 2748. Defendants breached the express warranty promising to repair and correct
13 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
14 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

15 2749. Affording Defendants a reasonable opportunity to cure their breach of written
16 warranties would be unnecessary and futile here.

17 2750. Furthermore, the limited warranty promising to repair and correct Defendants'
18 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
19 insufficient to make Wisconsin State Class members whole and because Defendants have failed
20 and/or have refused to adequately provide the promised remedies within a reasonable time.

21 2751. Accordingly, recovery by Wisconsin State Class members is not restricted to the
22 limited warranty promising to repair and correct Defendants' defect in materials and workmanship,
23 and they seek all remedies as allowed by law.

24 2752. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
25 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
26 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
27 material facts regarding the Class Vehicles. Wisconsin State Class members were therefore
28 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

1 2762. A warranty that the Class Vehicles were in merchantable condition and fit for the
2 ordinary purpose for which vehicles are used is implied by law pursuant to Wis. Stat. §§ 402.314
3 and 411.212.

4 2763. These Class Vehicles, when sold or leased and at all times thereafter, were
5 materially different from vehicles Defendants submitted for emissions testing and/or did not
6 comply with emissions regulations when being driven in Sport Plus mode, and were therefore not
7 fit for the ordinary purpose for which vehicles are used.

8 2764. Defendants were provided reasonable notice of these issues by way of a letter sent
9 by Plaintiffs as well as the regulators’ investigations.

10 2765. As a direct and proximate result of Defendants’ breach of the implied warranty of
11 merchantability, Wisconsin State Class members have been damaged in an amount to be proven at
12 trial.

13 **WYOMING COUNT I:**
14 **Violations of the Wyoming Consumer Protection Act,**
15 **Wyo. Stat. § 40-12-101, et seq.**
16 **(On Behalf of the Wyoming State Class)**

17 2766. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

18 2767. This count is brought on behalf of the Wyoming State Class against all Defendants.

19 2768. The Wyoming State Class and Defendants are “persons” within the meaning of
20 Wyo. Stat. § 40-12-102(a)(i).

21 2769. The Class Vehicles are “merchandise” pursuant to Wyo. Stat. § 40-12-102(a)(vi).

22 2770. Each sale or lease of a Class Vehicle to a Wyoming State Class member was a
23 “consumer transaction” as defined by Wyo. Stat. § 40-12-102(a)(ii). These consumer transactions
24 occurred “in the course of [Defendants’] business” under Wyo. Stat. § 40-12-105(a). Wyoming
25 State Class members purchased or leased one or more Class Vehicles.

26 2771. The Wyoming Consumer Protection Act (“Wyoming CPA”) prohibits lists unlawful
27 deceptive trade practices, including when a seller: “(i) Represents that merchandise has a source,
28 origin, sponsorship, approval, accessories, or uses it does not have;” “(iii) Represents that
merchandise is of a particular standard, grade, style or model, if it is not;” “(x) Advertises

1 merchandise with intent not to sell it as advertised;” “(xv) Engages in unfair or deceptive acts or
2 practices.” Wyo. Stat. § 40-12-105(a).

3 2772. In the course of their business, Defendants concealed and suppressed material facts
4 concerning the Class Vehicles. Defendants accomplished this by (a) submitting vehicles for
5 emissions testing that were different from production vehicles and/or (b) falsely attesting that
6 certain vehicles’ high performance (Sport Plus) mode could pass emissions tests when they in fact
7 did not.

8 2773. Wyoming State Class members had no way of discerning that Defendants’
9 representations were false and misleading because Wyoming State Class members did not have
10 access to Defendants’ emissions certification test vehicles and Defendants’ emissions-related
11 hardware was extremely sophisticated technology.

12 2774. Defendants thus violated the Wyoming CPA by, at minimum: representing that
13 Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;
14 representing that Class Vehicles are of a particular standard, quality, and grade when they are not;
15 advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing
16 that the subject of a transaction involving Class Vehicles has been supplied in accordance with a
17 previous representation when it has not.

18 2775. Defendants intentionally and knowingly misrepresented material facts regarding the
19 Class Vehicles with intent to mislead the Wyoming State Class.

20 2776. Defendants knew or should have known that their conduct violated the Wyoming
21 CPA.

22 2777. Defendants owed the Wyoming State Class a duty to disclose the illegality and
23 public health risks, the true nature of the Class Vehicles, because Defendants:

24 A. possessed exclusive knowledge that they were manufacturing, selling, and
25 distributing vehicles throughout the United States that did not perform as advertised;

26 B. intentionally concealed the foregoing from regulators and Wyoming State
27 Class members; and/or
28

1 C. made incomplete representations about the Class Vehicles' fuel economy
2 and emissions while purposefully withholding material facts that contradicted these
3 representations.

4 2778. Defendants' concealment of the true characteristics of the Class Vehicles' fuel
5 consumption and emissions were material to the Wyoming State Class.

6 2779. Defendants' unfair or deceptive acts or practices were likely to and did in fact
7 deceive regulators and reasonable consumers, including the Wyoming State Class, about the true
8 environmental cleanliness and efficiency of the Class Vehicles, the quality of Defendants' brands,
9 and the true value of the Class Vehicles.

10 2780. Defendants' violations present a continuing risk to the Wyoming State Class as well
11 as to the general public. Defendants' unlawful acts and practices complained of herein affect the
12 public interest.

13 2781. Wyoming State Class members suffered ascertainable loss and actual damages as a
14 direct and proximate result of Defendants' misrepresentations and concealment of and failure to
15 disclose material information. Defendants had an ongoing duty to all their customers to refrain
16 from unfair and deceptive practices under the Wyoming CPA. All owners of Class Vehicles
17 suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made
18 in the course of Defendants' business.

19 2782. Pursuant to Wyo. Stat. § 40-12-108(a), the Wyoming State Class seeks damages as
20 determined at trial, and any other just and proper relief available under the Wyoming CPA,
21 including but not limited to court costs and reasonable attorneys' fees as provided in Wyo. Stat.
22 § 40-12-108(b).

23 2783. Pursuant to Wyo. Stat. Ann. § 40-12-109, Plaintiffs sent notice letters to
24 Defendants. Additionally, all Defendants were provided notice of the issues raised in this count and
25 this Complaint by way of the investigations conducted by governmental regulators. The Wyoming
26 State Class seeks all damages and relief to which it is entitled.

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28

**WYOMING COUNT II:
Breach of Express Warranty
Wyo. Stat. §§ 34.1-2-313 and 34.1-.2A-210
(On Behalf of the Wyoming State Class)**

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3 2784. Plaintiffs re-allege and incorporate by reference all preceding allegations as though
4 fully set forth herein.

5 2785. This count is brought on behalf of the Wyoming State Class against all Defendants.

6 2786. Defendants are and were at all relevant times “merchant[s]” with respect to motor
7 vehicles under Wyo. Stat. §§ 34.1-2-104(a) and 34.1-2.A-103(a)(xx), and “sellers” of motor
8 vehicles under § 34.1-2-103(a)(iv).

9 2787. With respect to leases, Defendants are and were at all relevant times “lessors” of
10 motor vehicles under Wyo. Stat. § 34.1-2.A-103(a)(xvi).

11 2788. The Class Vehicles are and were at all relevant times “goods” within the meaning of
12 Wyo. Stat. §§ 34.1-2-105(a) and 34.1-2.A-103(a)(viii).

13 2789. In connection with the purchase or lease of each one of its new vehicles, Defendants
14 provide an express warranty for a period of four years or 50,000 miles, whichever occurs first. This
15 warranty exists to repair the vehicle “if it fails to function properly as designed during normal use.”

16 2790. Defendants also made numerous representations, descriptions, and promises to
17 Wyoming State Class members regarding the performance and emission controls of their vehicles.

18 2791. For example, Defendants included in the warranty booklets for some or all of the
19 Class Vehicles the warranty that its vehicles were “designed, built, and equipped to conform at the
20 time of sale with all U.S. emission standards applicable at the time of manufacture, and that it is free
21 from defects in material and workmanship which would cause it not to meet those standards.”

22 2792. The Clean Air Act also requires manufacturers of light-duty vehicles to provide two
23 federal emission control warranties: a “Performance Warranty” and a “Design and Defect
24 Warranty.”

25 2793. The EPA requires vehicle manufacturers to provide a Performance Warranty with
26 respect to the vehicles’ emission systems. Thus, Defendants also provide an express warranty for
27 their vehicles through a Federal Emissions Performance Warranty. The Performance Warranty
28

1 required by the EPA applies to repairs that are required during the first two years or 24,000 miles,
2 whichever occurs first, when a vehicle fails an emissions test. Under this warranty, certain major
3 emission control components are covered for the first eight years or 80,000 miles (whichever
4 comes first). These major emission control components subject to the longer warranty include the
5 catalytic converters, the electronic emission control unit, and the onboard emission diagnostic
6 device or computer.

7 2794. The EPA requires vehicle manufacturers to issue Design and Defect Warranties
8 with respect to their vehicles' emission systems. Thus, Defendants also provide an express
9 warranty for their vehicles through a Federal Emission Control System Defect Warranty. The
10 Design and Defect Warranty required by the EPA covers repair of emission control or emission
11 related parts, which fail to function or function improperly because of a defect in materials or
12 workmanship. This warranty provides protection for two years or 24,000 miles, whichever comes
13 first, or, for the major emission control components, for eight years or 80,000 miles, whichever
14 comes first.

15 2795. As manufacturers of light-duty vehicles, Defendants were required to provide these
16 warranties to purchasers or lessees of Class Vehicles.

17 2796. Defendants' warranties formed a basis of the bargain that was reached when
18 consumers purchased or leased Class Vehicles.

19 2797. Despite the existence of warranties, Defendants failed to inform Wyoming State
20 Class members that the Class Vehicles were defective and intentionally designed and manufactured
21 to emit more pollution and achieve worse fuel economy on the road than what was disclosed to
22 regulators and represented to consumers who purchased or leased them, and Defendants failed to
23 fix the defective emission components free of charge.

24 2798. Defendants breached the express warranty promising to repair and correct
25 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
26 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

27 2799. Affording Defendants a reasonable opportunity to cure their breach of written
28 warranties would be unnecessary and futile here.

1 2800. Furthermore, the limited warranty promising to repair and correct Defendants’
2 defect in materials and workmanship fails in its essential purpose because the contractual remedy is
3 insufficient to make Wyoming State Class members whole and because Defendants have failed
4 and/or have refused to adequately provide the promised remedies within a reasonable time.

5 2801. Accordingly, recovery by Wyoming State Class members is not restricted to the
6 limited warranty promising to repair and correct Defendants’ defect in materials and workmanship,
7 and they seek all remedies as allowed by law.

8 2802. Also, as alleged in more detail herein, at the time Defendants warranted and sold or
9 leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did not
10 conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
11 material facts regarding the Class Vehicles. Wyoming State Class members were therefore induced
12 to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

13 2803. Moreover, many of the injuries flowing from the Class Vehicles cannot be resolved
14 through the limited remedy of repairing and correcting Defendants’ defect in materials and
15 workmanship as many incidental and consequential damages have already been suffered because of
16 Defendants’ fraudulent conduct as alleged herein, and because of its failure and/or continued
17 failure to provide such limited remedy within a reasonable time, and any limitation on Wyoming
18 State Class members’ remedies would be insufficient to make them whole.

19 2804. Finally, because of Defendants’ breach of warranty as set forth herein, Wyoming
20 State Class members assert, as additional and/or alternative remedies, the revocation of acceptance
21 of the goods and the return to them of the purchase or lease price of all Class Vehicles currently
22 owned or leased, and for such other incidental and consequential damages as allowed.

23 2805. Defendants were provided reasonable notice of these issues by way of a letter sent
24 by Plaintiffs as well as the regulators’ investigations.

25 2806. As a direct and proximate result of Defendants’ breach of express warranties,
26 Wyoming State Class members have been damaged in an amount to be determined at trial.

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**WYOMING COUNT III:
Breach of Implied Warranty of Merchantability
Wyo. Stat. §§ 34.1-2-314 and 34.1-2A-212
(On Behalf of the Wyoming State Class)**

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2807. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2808. This count is brought on behalf of the Wyoming State Class against all Defendants.

2809. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Wyo. Stat. §§ 34.1-2-104(a) and 34.1-2.A-103(a)(xx), and “sellers” of motor vehicles under § 34.1-2-103(a)(iv).

2810. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Wyo. Stat. § 34.1-2.A-103(a)(xvi).

2811. The Class Vehicles are and were at all relevant times “goods” within the meaning of Wyo. Stat. §§ 34.1-2-105(a) and 34.1-2.A-103(a)(viii).

2812. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Wyo. Stat. §§ 34.1-2-314 and 34.1-2.A-212.

2813. These Class Vehicles, when sold or leased and at all times thereafter, were materially different from vehicles Defendants submitted for emissions testing and/or did not comply with emissions regulations when being driven in Sport Plus mode, and were therefore not fit for the ordinary purpose for which vehicles are used.

2814. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs as well as the regulators’ investigations.

2815. As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Wyoming State Class members have been damaged in an amount to be proven at trial.

X. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide Class and all Subclasses, respectfully request that the Court grant class certification under the applicable

1 provisions of Fed. R. Civ. P. 23 and enter judgment in their favor and against Defendants, as
2 follows:

3 A. An order temporarily and permanently enjoining Defendants from
4 continuing the unlawful, deceptive, fraudulent, harmful, and unfair business conduct and
5 practices alleged in this Complaint;

6 B. Relief in the form of a comprehensive program to fully reimburse and make
7 whole all Class members for all costs and economic losses that resulted from the inaccurate
8 fuel economy disclosures, as well as any other consequential damages suffered as a result of
9 the false fuel economy statistics;

10 C. A declaration that Defendants are financially responsible for all Class notice
11 and the administration of Class relief;

12 D. Costs, restitution, compensatory damages for economic loss and
13 out-of-pocket costs, multiple damages under applicable states' laws, punitive and
14 exemplary damages under applicable law, and disgorgement, in an amount to be determined
15 at trial;

16 E. Rescission of all Class Vehicle purchases or leases, including
17 reimbursement and/or compensation of the full purchase price of all Class Vehicles,
18 including taxes, licenses, and other fees.

19 F. Any and all applicable statutory and civil penalties;

20 G. An order requiring Defendants to pay both pre- and post-judgment interest
21 on any amounts awarded.

22 H. An award of costs and attorneys' fees, as allowed by law;

23 I. Leave to amend this Complaint to conform to the evidence produced at trial;
24 and

25 J. Such other or further relief as the Court may deem appropriate, just, and
26 equitable.

1 **XI. DEMAND FOR JURY TRIAL**

2 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any
3 and all issues in this action so triable of right.

4 Dated: June 15, 2022

Respectfully submitted,

5 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

6 By: /s/ Elizabeth J. Cabraser

7 Elizabeth J. Cabraser (State Bar No. 083151)

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CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2022 service of this document was accomplished pursuant to the Court’s electronic filing procedures by filing this document through the ECF system.

/s/Elizabeth J. Cabraser
Elizabeth J. Cabraser