

1 Steve W. Berman (*pro hac vice pending*)
Sean R. Matt (*pro hac vice pending*)
2 HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
3 Seattle, WA 98101
Telephone: (206) 623-7292
4 Facsimile: (206) 623-0594
steve@hbsslaw.com
5 sean@hbsslaw.com

6 Jeff D. Friedman
HAGENS BERMAN SOBOL SHAPIRO LLP
7 715 Hearst Avenue, Suite 202
Berkeley, CA 94710
8 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
9 jefff@hbsslaw.com

10 Attorneys for Plaintiff and the Proposed Classes

11 [Additional counsel on signature page]

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UNITED STATES DISTRICT COURT

14

NORTHERN DISTRICT OF CALIFORNIA

15

16 GWENDOLYN ANDARY, individually and on
behalf of all others similarly situated,

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Plaintiff,

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v.

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20 MERCEDES-BENZ USA, LLC, a Delaware
Limited Liability Company,

21

Defendant.

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27

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No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiff Gwendolyn Andary (Plaintiff), individually and on behalf of all others similarly
2 situated (the “Class”), alleges the following based upon the investigation of counsel, the review of
3 scientific papers, and the investigation of experts:

4 **I. INTRODUCTION**

5 1. In the wake of the major scandal involving Volkswagen and Audi diesel vehicles
6 evading emissions standards with the help of certain software that turns off emissions controls when
7 the vehicles are not being tested, reports now indicate that Mercedes-Benz USA, LLC’s (Mercedes)
8 so called “Clean Diesel” vehicles emit far more pollution on the road than in lab tests. Real world
9 testing has recently revealed that these vehicles emit dangerous oxides of nitrogen (NO_x) at a level
10 *more than 65 times higher than the United States Environmental Protection Agency permits*. The
11 Mercedes “Clean Diesel” turns out to be far from “clean.”

12 2. Diesel engines pose a difficult challenge to the environment because they have an
13 inherent trade-off between power, fuel efficiency, and emissions. Compared to gasoline engines,
14 diesel engines generally produce greater torque, low-end power, better drivability and much higher
15 fuel efficiency. But these benefits come at the cost of much dirtier and more harmful emissions.

16 3. One by-product of diesel combustion is NO_x, which generally describes several
17 compounds comprised of nitrogen and oxygen atoms. These compounds are formed in the cylinder
18 of the engine during the high temperature combustion process. NO_x pollution contributes to
19 nitrogen dioxide, particulate matter in the air, and reacts with sunlight in the atmosphere to form
20 ozone. Exposure to these pollutants has been linked with serious health dangers, including serious
21 respiratory illnesses and premature death due to respiratory-related or cardiovascular-related effects.
22 The United States Government, through the Environmental Protection Agency (EPA), has passed
23 and enforced laws designed to protect United States citizens from these pollutants and certain
24 chemicals and agents known to cause disease in humans. Automobile manufacturers must abide by
25 these U.S. laws and must adhere to EPA rules and regulations.

26 4. In order to produce a diesel engine that has desirable torque and power characteristics,
27 good fuel economy, and emissions levels low enough to meet the stringent European and United
28 States governmental emission standards, Mercedes developed the BlueTEC™ diesel engine. The

1 BlueTEC name is a general trade name used to describe a number of in-cylinder and after-treatment
2 technologies used to reduce emissions. The primary emission control after-treatment technologies
3 include a diesel particulate filter (DPF) and a selective catalytic reduction (SCR) system. The DPF
4 traps and removes particulate (soot) emissions, while the SCR system facilitates a chemical reaction
5 to reduce NOx into less harmful substances, such as nitrogen and oxygen.

6 5. In order to appeal to environmentally conscious consumers, Mercedes *vigorously*
7 markets its BlueTEC vehicles as “the world’s cleanest and most advanced diesel” with “ultra-low
8 emissions, high fuel economy and responsive performance” that emits “up to 30% lower greenhouse-
9 gas emissions than gasoline.” Mercedes represents that its BlueTEC vehicles “convert[] the nitrogen
10 oxide emissions into harmless nitrogen and oxygen” and “reduces the nitrogen oxides in the exhaust
11 gases by up to 90%.”

12 6. Additionally, Mercedes promotes its Clean Diesel vehicles as “Earth Friendly”: “With
13 BlueTEC, cleaner emissions are now an equally appealing benefit.” In fact, Mercedes proclaims
14 itself “#1 in CO2 emissions for luxury vehicles.”

15 7. These representations are deceptive and false. Mercedes has programmed its
16 BlueTEC vehicles to turn off the NOx reduction systems when ambient temperatures drop below 50
17 degrees Fahrenheit. Mercedes has admitted that a shut-off device in the engine management of
18 certain BlueTEC diesel cars stops NOx cleaning under these and other, unspecified circumstances.
19 On-road testing has confirmed that Mercedes’ so-called “Clean Diesel” cars produced NOx
20 emissions at an average of 603 mg/km, which is 7.5 times the Euro 6 standard and 19 times higher
21 than the U.S. standard. Some instantaneous NOx values were as high as 2000 mg/km—25 times the
22 Euro 6 standard and 65 times higher than the U.S. limit.

23 8. Thus, Mercedes manufactures, designs, markets, sells, and leases certain “BlueTEC
24 Clean Diesel” vehicles as if they were “reduced emissions” cars that comply with all applicable
25 regulatory standards, when in fact, these Mercedes vehicles are not “clean diesels” and emit more
26 pollutants than allowed by federal and state laws—and far more than their gasoline fueled
27 counterparts. On information and belief, Plaintiff alleges that the following Mercedes models
28 powered by BlueTEC diesel fueled engines are affected by the unlawful, unfair, deceptive, and

1 otherwise defective emission controls utilized by Mercedes: ML 320, ML 350, GL 320, E320, S350,
2 R320, E Class, GL Class, ML Class, R Class, S Class, GLK Class, GLE Class, and Sprinter (the
3 Affected Vehicles).

4 9. Mercedes did not previously disclose to Plaintiff, consumers, or U.S. regulatory
5 authorities that, when the temperature falls below 50 degrees, the Affected Vehicles spew
6 unmitigated NOx into the air.

7 10. Mercedes never disclosed to consumers that Mercedes diesels with BlueTEC engines
8 may be “clean” diesels when it is warm, but are “dirty” diesels when it is not. Mercedes never
9 disclosed that, when the temperature drops below 50 degrees, it prioritizes engine power and profits
10 over people.

11 11. Plaintiff brings this action individually and on behalf of all other current and former
12 owners or lessees of Affected Vehicles. Plaintiff seeks damages, injunctive relief, and equitable
13 relief for Mercedes’ misconduct related to the design, manufacture, marketing, sale, and lease of
14 Affected Vehicles with unlawfully high emissions, as alleged in this Complaint.

15 **II. JURISDICTION**

16 12. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28
17 U.S.C. § 1332(d), because the proposed Class consists of 100 or more members; the amount in
18 controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This
19 Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

20 **III. VENUE**

21 13. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of
22 the events or omissions giving rise to Plaintiff’s claims occurred in this District, where Mercedes was
23 headquartered for most of the relevant time period. Moreover, Mercedes has marketed, advertised,
24 sold, and leased the Affected Vehicles within this District.

25 **IV. PARTIES**

26 **A. Plaintiff**

27 14. Plaintiff Gwendolyn Andary is an individual residing in Half Moon Bay, California.
28 In August 2013, Plaintiff purchased a new, model year 2013 Mercedes GLK 250 BlueTEC from

1 Walter's Automotive, an authorized Mercedes dealer in Riverside, California. Plaintiff purchased,
2 and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was
3 equipped with an emissions system that turned off NOx reduction when the temperature dropped
4 below 50 degrees Fahrenheit, and that during normal driving conditions, emitted many multiples of
5 the allowed level of pollutants such as NOx. Mercedes' unfair, unlawful, and deceptive conduct in
6 designing, manufacturing, marketing, selling, and leasing the GLK 250 without proper emission
7 controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her
8 vehicle. Mercedes knew about, or recklessly disregarded, the inadequate emission controls during
9 normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff
10 purchased her vehicle on the reasonable, but mistaken, belief that her vehicle was a "clean diesel,"
11 complied with United States emissions standards, was properly EPA certified, and would retain all of
12 its operating characteristics throughout its useful life.

13 15. Plaintiff selected and ultimately purchased her vehicle, in part, because of the
14 BlueTEC Clean Diesel system, as represented through advertisements and representations made by
15 Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the
16 engine system for the environment and the efficiency and power/performance of the engine system.
17 None of the advertisements reviewed or representations received by Plaintiff contained any
18 disclosure relating to the unlawfully high emissions and the fact that Mercedes had designed part of
19 the emissions reduction system to turn off below 50 degrees Fahrenheit. Had Mercedes disclosed
20 this design, and the fact that the GLK 250 actually emitted unlawfully high levels of pollutants,
21 Plaintiff would not have purchased the vehicle, or would have paid less for it.

22 16. Each and every Plaintiff and each Class member has suffered an ascertainable loss as
23 a result of Mercedes' omissions and/or misrepresentations associated with the BlueTEC Clean Diesel
24 engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future
25 additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle.

26 17. Neither Mercedes nor any of its agents, dealers, or other representatives informed
27 Plaintiff or Class members of the existence of the unlawfully high emissions and/or defective nature
28 of the BlueTEC Clean Diesel engine system of the Affected Vehicles prior to purchase.

B. Defendant

18. Defendant Mercedes-Benz USA, LLC (“Mercedes”) is a Delaware limited liability corporation whose principal place of business is 303 Perimeter Center North, Suite 202, Atlanta, Georgia, 30346. Until approximately July 2015, Mercedes’ principal place of business was 1 Mercedes Drive, Montvale, New Jersey 07645. Mercedes’ Customer Service Center is at 3 Mercedes Drive, Montvale, New Jersey 07645, and it operates a Learning and Performance Center at the same location. Mercedes operates a regional sales office at Morris Corporate Center 3, Bldg. D, 400 Interpace Parkway, Parsippany, New Jersey 07054, and has a parts distribution center at 100 New Canton Way, Robbinsville, New Jersey 08691. Mercedes maintains its Western Region office at 9 Whatney, Irvine, California 92618; a parts distribution center at 14613 Bar Harbor Road, Fontana, California 92336; a vehicle prep center at 22707 South Wilmington Avenue, Carson, California 90745; and a learning and performance center at 9571 Pittsburg Avenue, Rancho Cucamonga, California 91730. Mercedes’ registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

19. Mercedes, through its various entities, designs, manufactures, markets, distributes and sells Mercedes automobiles in California and multiple other locations in the United States and worldwide. Mercedes and/or its agents designed, manufactured, and installed the BlueTEC Clean Diesel engine systems in the Affected Vehicles. Mercedes also developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

V. FACTUAL ALLEGATIONS**A. The Environmental Challenges Posed by Diesel Engines and the United States Regulatory Response Thereto**

20. The United States Government, through the Environmental Protection Agency (EPA), has passed and enforced laws designed to protect United States citizens from pollution and in particular, certain chemicals and agents known to cause disease in humans. Automobile manufacturers must abide by these U.S. laws and must adhere to EPA rules and regulations.

1 21. The U.S. Clean Air Act has strict emissions standards for vehicles, and it requires
2 vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet
3 applicable federal emissions standards to control air pollution. Every vehicle sold in the United
4 States must be covered by an EPA issued certificate of conformity.

5 22. There is a very good reason that these laws and regulations exist, particularly as
6 regards vehicles with diesel engines: In 2012, the World Health Organization declared diesel vehicle
7 emissions to be carcinogenic, and about as dangerous as asbestos.

8 23. Diesel engines pose a particularly difficult challenge to the environment because they
9 have an inherent trade-off between power, fuel efficiency, and emissions: the greater the power and
10 fuel efficiency, the dirtier and more harmful the emissions.

11 24. Instead of using a spark plug to combust highly refined fuel with short hydrocarbon
12 chains, as gasoline engines do, diesel engines compress a mist of liquid fuel and air to very high
13 temperatures and pressures, which causes the diesel to spontaneously combust. This causes a more
14 powerful compression of the pistons, which produces greater engine torque (that is, more power).

15 25. The diesel engine is able to do this both because it operates at a higher compression
16 ratio than a gasoline engine and because diesel fuel contains more energy than gasoline.

17 26. But this greater energy and fuel efficiency comes at a cost: diesel produces dirtier and
18 more dangerous emissions. One by-product of diesel combustion is oxides of nitrogen (NOx), which
19 include a variety of nitrogen and oxygen chemical compounds that only form at high temperatures.

20 27. NOx pollution contributes to nitrogen dioxide, particulate matter in the air, and reacts
21 with sunlight in the atmosphere to form ozone. Exposure to these pollutants has been linked with
22 serious health dangers, including asthma attacks and other respiratory illness serious enough to send
23 people to the hospital. Ozone and particulate matter exposure have been associated with premature
24 death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people
25 with pre-existing respiratory illness are at acute risk of health effects from these pollutants.

26 **B. The BlueTEC Technology**

27 28. Car manufacturers have struggled to produce diesel engines that have high power and
28 strong fuel efficiency but also cleaner emissions. Removing NOx from the untreated exhaust is

1 difficult, and diesel car makers have reacted by trying to remove NOx from the car's exhaust using
2 catalysts.

3 29. Mercedes' response to the challenge has been the BlueTEC diesel engine.

4 30. After the by-products of combustion leave the engine, the BlueTEC technology
5 injects ammonia-rich urea into the exhaust in order to convert NOx into less harmful substances,
6 such as nitrogen and oxygen.

7 31. The urea solution, which is branded "AdBlue" in the Affected Vehicles, is held in its
8 own tank under the car. The AdBlue in the tank must be periodically refilled to ensure that the
9 catalyst system effectively removes NOx.

10 32. The BlueTEC approach, when it is operational, results in cleaner emissions without
11 compromising power or fuel economy.

12 **C. Mercedes Advertised and Promoted BlueTEC as the World's Cleanest Diesel Engine**

13 33. In order to counter beliefs that diesel engines produce "dirty" emissions and to
14 capitalize on consumers' desire to protect the environment, Mercedes aggressively markets the
15 BlueTEC engine as being environmentally friendly.

16 34. The central theme in Mercedes' BlueTEC engine marketing is the promise of "clean
17 diesel":

18 **A Clean Campaign**

19 Clean diesel. Clearly better.



25 35. Mercedes touts the BlueTEC engine as "[e]arth-friendly, around the world."

26 36. Mercedes expressly markets the Affected Vehicles as BlueTEC Clean Diesel vehicles,
27 with EPA certifications throughout the United States: "Presenting BlueTEC: simply the world's
28

1 cleanest and most advanced diesel. . . . [W]e’ve been constantly refining and mastering the
2 technology, now available in five different Mercedes-Benz BlueTEC models in all 50 states.”

3 37. Mercedes promises that the BlueTEC Clean Diesel vehicles provide “higher torque
4 and efficiency with up to 30% lower greenhouse-gas emissions than gasoline,” together with “ultra-
5 low emissions, high fuel economy and responsive performance[.]” Mercedes represents that,
6 “[w]hen injected into the exhaust, AdBlue converts the nitrogen oxide emissions into harmless
7 nitrogen and oxygen” and “reduces the nitrogen oxides in the exhaust gases by up to 90%.”

8 38. According to Mercedes, the company offers consumers “the world’s cleanest diesel
9 automobiles.” Additionally, Mercedes promotes its Clean Diesel vehicles as “Earth Friendly”: “With
10 BlueTEC, cleaner emissions are now an equally appealing benefit.” In fact, Mercedes proclaims
11 itself “#1 in CO2 emissions for luxury vehicles.”

12 39. Mercedes holds itself out as a protector of the environment: “Long before it became
13 front-page news, Mercedes-Benz has been innovating and implementing new ways to help minimize
14 the impact of cars and trucks on the world we share. It’s a promise that’s been kept for generations,
15 and not just with cleaner, more efficient power under the hood. . . . For generations, Mercedes-Benz
16 has been breaking new ground to help preserve the earth for future generations.” Indeed, the
17 company relishes its message that it plays an industry leading role in advancing “green” technologies
18 like BlueTEC.

1 40. Mercedes calls BlueTEC an “environmental hero”:



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15 41. Other Mercedes ads touting BlueTEC as environmentally friendly and having ultra-
16 low emissions that “can help everyone breathe easier” include the following:

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BlueTEC Clean Diesel

Diesel, reinvented. By the inventor of the diesel car.

In 1936, Mercedes-Benz introduced the 260D, a car that delivered robust performance and 30% better economy from a fuel that had never before powered a car: diesel. Along with the first turbodiesel in 1977, and the breakthrough of Commonrail Direct Injection in 1997, Mercedes-Benz continues to reinvent this alternative fuel that offers higher torque and efficiency with up to 30% lower greenhouse-gas emissions than gasoline.

Today's BlueTEC models are simply the world's most advanced diesels, with the ultra-low emissions, high fuel economy and responsive performance that makes them not merely available in all 50 states, but desirable.

Discover more about BlueTEC Clean Diesel

- ▶ How BlueTEC works
- ▶ Earth-friendly, around the world

Earth-friendly, around the world

The leader in diesel, since the beginning.

Drivers in much of Europe and Asia frequently choose diesel over gasoline for its rich torque output and higher fuel efficiency. With BlueTEC, cleaner emissions are now an equally appealing benefit.

ADAC, Germany's largest automobile association, rates BlueTEC as #1 in CO2 emissions for luxury vehicles. Many BlueTEC models already fulfill the 2014 emission standards of the European Union. And beyond cars, the Mercedes-Benz Actros commercial truck is already the fuel economy champion and first to meet the Euro VI emission standard.

Since inventing the car in 1886, Mercedes-Benz has reinvented it numerous times. From the first diesel car of 1936 to today's BlueTEC clean diesels, it's an unmatched history of ever-increasing efficiency, record-setting durability, and exceeding the needs of drivers today, and tomorrow.



Up for anything, yet remarkably down to earth.

Full-time response. Far-reaching responsibility. The three engines of the GL-Class all share two powerful traits: The mighty torque necessary to motivate a full-size SUV. And certified Ultra Low Emissions, to motivate every other SUV on the planet. Two gasoline-powered V-8 engines deliver breathtaking acceleration. While a 50-state clean diesel BlueTEC V-6 breaks down its nitrogen oxide emissions into harmless nitrogen and oxygen, for torque-rich performance that can help everyone breathe easier. To wield its power even more wisely, every GL-Class features a smooth 7-speed automatic transmission and efficient 4MATIC® all-wheel drive* that continually directs the engine's torque to the tires with the best grip—in snow, mud or even dry corners. The GL-Class always strives to put its best foot forward.



Cleaner power. With an estimated 21 highway mpg,* the GL 350 BlueTEC can go up to 550 miles on a tank of fuel, including 85 Biodiesel. That's further than most any full-size SUV. Advanced BlueTEC technology starts with cleaner combustion of its diesel fuel, and finishes with certified Ultra Low Emissions, even in the most stringent U.S. states.

Pure performance. The GL-Class also offers two powerful gasoline-V-8 engines that output a bounty of low-end torque while still earning Ultra Low Emission Vehicle certification. The 335-hp GL 450 can accelerate from 0 to 60 mph in just 6.9 seconds, while the 382-hp GL 550 whisks you there in an effortless 6.4 seconds*—quicker than some sports cars.

Clear control. Every GL-Class delivers its ample power via the smooth, seamless response of a 7-speed automatic transmission. An elegant electronic selector lever operates with fingertip ease. Driven-adaptive logic matches the shift points to your current driving style, or you can take charge anytime with the steering wheel-mounted paddle shifters.

D. The Mercedes Deception

42. In the wake of a major scandal involving Volkswagen and Audi diesel vehicles evading emissions standards with the help of certain software that manipulates emissions controls

1 (called “defeat devices”),¹ scientific literature and reports indicate that Mercedes’ so called Clean
2 Diesel vehicles emit far more pollution on the road than in lab tests. The EPA has widened its probe
3 of auto emissions to include, for example, the Mercedes E250 BlueTEC.

4 43. Unlike Volkswagen and Audi, which employed software that turns full emissions
5 controls on only when the software detects that the vehicle is undergoing official emissions testing,
6 Mercedes does not use a “defeat device” specifically designed to trick the test.

7 44. However, *Mercedes has programmed its BlueTEC vehicles with another “defeat*
8 *device” that turns off the NOx reduction system when ambient temperatures drop below 50*
9 *degrees Fahrenheit.*

10 45. As first reported in a February 2016 issue of German language magazine *Der Spiegel*,
11 Mercedes has *admitted* that a shut-off device in the engine management of its C-Class diesel cars
12 stops NOx cleaning under these and other, unspecified circumstances. Mercedes asserts, without
13 providing details, that the shut-off is done to protect the engine.

14 46. So, while the Mercedes diesels with the BlueTEC engine are designed to pass official
15 emissions tests, which are usually conducted at a temperature exceeding 50 degrees, the vehicles
16 nonetheless emit far more pollution than government emissions standards in the United States permit
17 when the temperature drops below 50 degrees.

18 47. This puts the lie to Mercedes’ claims that BlueTEC is “the world’s cleanest diesel
19 passenger vehicle” with “ultralow emissions”: Mercedes misrepresents the emissions performance
20 of its vehicles equipped with BlueTEC engines because, when the temperature falls below 50
21 degrees, the Affected Vehicles spew unmitigated NOx into the air.

22 48. Mercedes never disclosed to consumers that Mercedes diesels with BlueTEC engines
23 may be “clean” diesels when it is warm, but are “dirty” diesels when it is not. Mercedes never

24 ¹ The EPA’s Notice of Violation (“NOV”) to Volkswagen Group of America, Inc. can be found
25 at: <http://www3.epa.gov/otaq/cert/documents/vw-nov-caa-09-18-15.pdf>. As detailed in the EPA’s
26 Notice of Violation (“NOV”), software in Volkswagen and Audi diesel vehicles detects when the
27 vehicle is undergoing official emissions testing and turns full emissions controls on only during the
28 test. But otherwise, while the vehicle is running, the emissions controls are suppressed. This results
in cars that meet emissions standards in the laboratory or state testing station, but during normal
operation emit NOx at up to 40 times the standard allowed under United States laws and regulations.
Volkswagen has admitted to installing a defeat device in its diesel vehicles.

1 disclosed that, when the temperature drops below 50 degrees, it prioritizes engine power and profits
2 over people.

3 49. A study conducted by TNO for the Dutch Ministry of Infrastructure and the
4 Environment confirms that, in real world testing, the Mercedes C-Class 220 emits NOx at levels
5 much higher than in controlled dynamometer tests and much higher than the “Euro 6 standard,”
6 which is less stringent than the U.S. standard. More specifically, the May 2015 TNO Report found
7 that post-selective catalytic reduction (SCR) tailpipe NOx emissions ranged from 250 to 2000
8 mg/km; for reference, the Euro 6 max, which is less stringent than U.S. standards, is 80 mg/km.
9 “Overall the NOx real-world emissions of [the C-Class 220] are relatively high, especially during the
10 very short trips . . . and trips at high speeds.” See TNO Report at 34. Furthermore, the “results show
11 clearly that different control strategies of the engine are applied in chassis dynamometer tests and on
12 the road.” *Id.*, Appendix B, page 3. In other words, the vehicle emitted significantly more NOx on
13 real-world test trips on the road than during a type approval test in the laboratory.

14 50. TNO added: “In chassis dynamometer tests the engine out NOx emissions are 100 to
15 450 mg/km, indicating an effective EGR [exhaust gas recirculation] system which reduces NOx
16 emissions in certain chassis dynamometer tests. In real-world tests the EGR system seems to be less
17 effective or not effective at all, as engine out NOx emissions in real-world tests range from 450 to as
18 much as 2250 mg/km. TNO Report at 34.

19 51. TNO also found that the tank holding the AdBlue in the Mercedes C-Class 220 was
20 too small to hold the amount of AdBlue catalyst necessary to reduce NOx emissions below
21 regulatory limits for the advertised service interval (22,000 km). The tank size is 25 liters, and TNO
22 found that a 45.8 liter tank would be necessary to meet the Euro 6 80 mg/km NOx emission level—a
23 level that is less stringent than U.S. limits. TNO Report at 45.

24 52. TNO further remarked: “It is remarkable that the NOx emission under real-world
25 conditions exceeds the type approval value by [so much]. It demonstrates that the settings of the
26 engine, the EGR and the SCR during a real-world test trip are such that they do not result in low
27 NOx emissions in practice. In other words: ***In most circumstances arising in normal situations on***
28

1 *the road, the systems scarcely succeed in any effective reduction of NOx emissions.*” TNO Report
2 at 6 (emphasis added).

3 53. Other organizations are beginning to take notice of the Mercedes deception. The
4 Transportation and Environment (T&E) organization, a European group aimed at promoting
5 sustainable transportation, compiled data from “respected testing authorities around Europe” that
6 show Mercedes might sell cars that produce illegal levels of tailpipe emissions. T&E stated in
7 September 2015 that real-world emissions testing showed drastic differences from laboratory tests
8 such that the Mercedes models tested emitted 50% more pollutants such as CO2 on the road than in
9 their laboratory tests. “For virtually every new model that comes onto the market the gap between
10 test and real-world performance leaps,” the report asserts.

11 54. Furthermore, it was reported in October 2015 that certain diesel models sold by
12 Mercedes in Europe (including the C 220 BlueTEC and the GLA 200 d) were found to emit 2 to 3
13 times higher levels of NOx pollution when tested in more realistic driving conditions, according to
14 new research data compiled by ADAC, Europe’s largest motoring organization. The new testing
15 results are based on a U.N.-developed test called “WLTC.”

16 55. Worse still, according to on-road testing in Europe by Emissions Analytics,
17 publicized on October 9, 2015, Mercedes’ diesel cars produced an average of 0.406g/km of NOx on
18 the road, 5 times higher than the Euro 6 level permits—and more than 13 times higher than the U.S.
19 level permits (.03g/km).

20 56. Emissions Analytics is a U.K. company, which says that it was formed to “overcome
21 the challenge of finding accurate fuel consumption and emissions figures for road vehicles.” With
22 regard to its recent on-road emissions testing, the company explains:

23 “[I]n the European market, we have found that real-world emissions of
24 the regulated nitrogen oxides are four times above the official level,
25 determined in the laboratory. Real-world emissions of carbon dioxide
26 are almost one-third above that suggested by official figures. For car
27 buyers, this means that fuel economy on average is one quarter worse
28 than advertised. This matters, even if no illegal activity is found.”

57. The German Environmental Aid organization (DUH) recently called for emergency
action to ban the C220 from city centers in Germany when the temperature drops below 10 degrees

1 Celsius/50 degrees Fahrenheit. See https://translate.google.com/translate?hl=en&sl=de&u=http://www.duh.de/pressemitteilung.html%3F%26tx_ttnews%255Btt_news%255D%3D3726&prev=search.

3 58. In response to the current diesel emissions controversy, Mercedes' parent company, Daimler AG, has issued a statement claiming: "We categorically deny the accusation of manipulating emission tests regarding our vehicles. A defeat device, a function which illegitimately reduces emissions during testing, has never been and will never be used at Daimler. This holds true for both diesel and petrol engines. Our engines meet and adhere to every legal requirement. . . . [W]e can confirm that none of the allegations apply to our vehicles. The technical programming of our engines adheres to all legal requirements."

10 59. A spokesman for Mercedes evaded the ramifications of the findings that Mercedes diesel cars violate emissions standards, saying only: "Since real-world driving conditions do not generally reflect those in the laboratory, the consumption figures may differ from the standardized figures." Notably, Mercedes and its parent company have not actually denied that their diesel cars violate emissions standards.

15 60. The U.S. Clean Air Act has strict emissions standards for vehicles and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air pollution. Every vehicle sold in the United States must be covered by an EPA issued certificate of conformity. Accordingly, Mercedes has certified to the EPA that the Mercedes BlueTEC Clean Diesel vehicles sold in the United States meet applicable federal emissions standards. Nevertheless, by manufacturing and selling BlueTEC cars that emit far more pollutants than permitted under EPA standards in cool weather, and that emit far more pollutants on the road than in laboratory tests in cool weather, Mercedes violated the Clean Air Act, defrauded its customers, and engaged in unfair competition under state and federal law.

24 61. On information and belief, Plaintiff alleges that the following Mercedes diesel models are affected by the unlawful, unfair, deceptive, and otherwise defective emission controls (the "Affected Vehicles"): ML 320, ML 350, GL 320, E320, S350, R320, E Class, GL Class, ML Class, R Class, S Class, GLK Class, GLE Class, and Sprinter. Discovery may reveal that additional vehicle models and model years are properly included as Affected Vehicles.

1 **E. The Damage**

2 62. Mercedes will not be able to make the Affected Vehicles comply with emissions
3 standards without substantially degrading their performance characteristics, including their
4 horsepower and their efficiency. As a result, even if Mercedes is able to make Class members'
5 Affected Vehicles EPA compliant, Class members will nonetheless suffer actual harm and damages
6 because their vehicles will no longer perform as they did when purchased and as advertised. This
7 will necessarily result in a diminution in value of every Affected Vehicle, and it will cause owners of
8 Affected Vehicles to pay more for fuel while using their affected vehicles.

9 63. As a result of Mercedes' unfair, deceptive, and/or fraudulent business practices, and
10 its failure to disclose that under normal operating conditions the Affected Vehicles are not "clean"
11 diesels and emit more pollutants than permitted under federal and state laws, owners and/or lessees
12 of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiff and Class
13 members known of the higher emissions at the time they purchased or leased their Affected Vehicles,
14 they would not have purchased or leased those vehicles, or would have paid substantially less for the
15 vehicles than they did. Moreover, when and if Mercedes recalls the Affected Vehicles and degrades
16 the BlueTEC Clean Diesel engine performance in order to make the Affected Vehicles compliant
17 with EPA standards, Plaintiff and Class members will be required to spend additional sums on fuel
18 and will not obtain the performance characteristics of their vehicles when purchased. Moreover,
19 Affected Vehicles will necessarily be worth less in the marketplace because of their decrease in
20 performance and efficiency and increased wear on their cars' engines.

21 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

22 **A. Discovery Rule Tolling**

23 64. Class Members had no way of knowing about Mercedes' deception with respect to the
24 unlawfully high emissions of its BlueTEC Clean Diesel engine system in Affected Vehicles. To be
25 sure, Mercedes continues to market the Affected Vehicles as "clean" diesels and also continues to
26 claim that that Affected Vehicles comply with EPA emissions standards.

27 65. Within the time period of any applicable statutes of limitation, Plaintiff and members
28 of the proposed classes could not have discovered through the exercise of reasonable diligence that

1 Mercedes was concealing the conduct complained of herein and misrepresenting the Company's true
2 position with respect to the emission qualities of the Affected Vehicles.

3 66. Plaintiff and the other Class Members did not discover, and did not know of facts that
4 would have caused a reasonable person to suspect, that Mercedes did not report information within
5 its knowledge to federal and state authorities, its dealerships, or consumers; nor would a reasonable
6 and diligent investigation have disclosed that Mercedes had concealed information about the true
7 emissions of the Affected Vehicles, which was discovered by Plaintiff only shortly before this action
8 was filed. Nor in any event would such an investigation on the part of Plaintiff and other Class
9 members have disclosed that Mercedes valued profits over truthful marketing and compliance with
10 federal and state law.

11 67. For these reasons, all applicable statutes of limitation have been tolled by operation of
12 the discovery rule with respect to claims as to the Affected Vehicles.

13 **B. Fraudulent Concealment Tolling**

14 68. All applicable statutes of limitation have also been tolled by Mercedes' knowing and
15 active fraudulent concealment and denial of the facts alleged herein throughout the time period
16 relevant to this action.

17 69. Instead of disclosing its emissions scheme, or that the quality and quantity of
18 emissions from the Affected Vehicles were far worse than represented, and of its disregard of federal
19 and state law, Mercedes falsely represented that the Affected Vehicles complied with federal and
20 state emissions standards, that the diesel engines were "Clean," and that it was a reputable
21 manufacturer whose representations could be trusted.

22 **C. Estoppel**

23 70. Mercedes was under a continuous duty to disclose to Plaintiff and the other Class
24 members the true character, quality, and nature of emissions from the Affected Vehicles, and of
25 those vehicles' emissions systems, and of the compliance of those systems with applicable federal
26 and state law.

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The California Subclass

All persons or entities in the state of California who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Colorado Subclass

All persons or entities in the state of Colorado who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Connecticut Subclass

All persons or entities in the state of Connecticut who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Delaware Subclass

All persons or entities in the state of Delaware who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Florida Subclass

All persons or entities in the state of Florida who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Georgia Subclass

All persons or entities in the state of Georgia who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Hawaii Subclass

All persons or entities in the state of Hawaii who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Idaho Subclass

All persons or entities in the state of Idaho who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Illinois Subclass

All persons or entities in the state of Illinois who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Indiana Subclass

All persons or entities in the state of Indiana who owned and/or leased an Affected Vehicle as of February 18, 2016.

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The Iowa Subclass

All persons or entities in the state of Iowa who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Kansas Subclass

All persons or entities in the state of Kansas who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Kentucky Subclass

All persons or entities in the state of Kentucky who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Louisiana Subclass

All persons or entities in the state of Louisiana who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Maine Subclass

All persons or entities in the state of Maine who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Maryland Subclass

All persons or entities in the state of Maryland who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Massachusetts Subclass

All persons or entities in the state of Massachusetts who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Michigan Subclass

All persons or entities in the state of Michigan who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Minnesota Subclass

All persons or entities in the state of Minnesota who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Mississippi Subclass

All persons or entities in the state of Mississippi who owned and/or leased an Affected Vehicle as of February 18, 2016.

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The Missouri Subclass

All persons or entities in the state of Missouri who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Montana Subclass

All persons or entities in the state of Montana who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Nebraska Subclass

All persons or entities in the state of Nebraska who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Nevada Subclass

All persons or entities in the state of Nevada who owned and/or leased an Affected Vehicle as of February 18, 2016.

The New Hampshire Subclass

All persons or entities in the state of New Hampshire who owned and/or leased an Affected Vehicle as of February 18, 2016.

The New Jersey Subclass

All persons or entities in the state of New Jersey who owned and/or leased an Affected Vehicle as of February 18, 2016.

The New Mexico Subclass

All persons or entities in the state of New Mexico who owned and/or leased an Affected Vehicle as of February 18, 2016.

The New York Subclass

All persons or entities in the state of New York who owned and/or leased an Affected Vehicle as of February 18, 2016.

The North Carolina Subclass

All persons or entities in the state of North Carolina who owned and/or leased an Affected Vehicle as of February 18, 2016.

The North Dakota Subclass

All persons or entities in the state of North Dakota who owned and/or leased an Affected Vehicle as of February 18, 2016.

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The Ohio Subclass

All persons or entities in the state of Ohio who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Oklahoma Subclass

All persons or entities in the state of Oklahoma who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Oregon Subclass

All persons or entities in the state of Oregon who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Pennsylvania Subclass

All persons or entities in the state of Pennsylvania who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Rhode Island Subclass

All persons or entities in the state of Rhode Island who owned and/or leased an Affected Vehicle as of February 18, 2016.

The South Carolina Subclass

All persons or entities in the state of South Carolina who owned and/or leased an Affected Vehicle as of February 18, 2016.

The South Dakota Subclass

All persons or entities in the state of South Dakota who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Tennessee Subclass

All persons or entities in the state of Tennessee who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Texas Subclass

All persons or entities in the state of Texas who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Utah Subclass

All persons or entities in the state of Utah who owned and/or leased an Affected Vehicle as of February 18, 2016.

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The Vermont Subclass

All persons or entities in the state of Vermont who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Virginia Subclass

All persons or entities in the state of Virginia who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Washington Subclass

All persons or entities in the state of Washington who owned and/or leased an Affected Vehicle as of February 18, 2016.

The West Virginia Subclass

All persons or entities in the state of West Virginia who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Wisconsin Subclass

All persons or entities in the state of Wisconsin who owned and/or leased an Affected Vehicle as of February 18, 2016.

The Wyoming Subclass

All persons or entities in the state of Wyoming who owned and/or leased an Affected Vehicle as of February 18, 2016.

The District of Columbia Subclass

All persons or entities in the District of Columbia who owned and/or leased an Affected Vehicle as of February 18, 2016.

75. Excluded from the Class are individuals who have personal injury claims resulting from the unlawfully high emissions in the BlueTEC Clean Diesel system of Affected Vehicles. Also excluded from the Class are Mercedes and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the Judge to whom this case is assigned and his/her immediate family. Plaintiff reserves the right to revise the Class definition based upon information learned through discovery.

1 76. Certification of Plaintiff's claims for class-wide treatment is appropriate because
2 Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as
3 would be used to prove those elements in individual actions alleging the same claim.

4 77. This action has been brought and may be properly maintained on behalf of each of the
5 Classes proposed herein under Federal Rule of Civil Procedure 23.

6 78. **Numerosity**. Federal Rule of Civil Procedure 23(a)(1): The members of the Classes
7 are so numerous and geographically dispersed that individual joinder of all Class members is
8 impracticable. While Plaintiff is informed and believes that there are at least thousands of members
9 of the Class, the precise number of Class members is unknown to Plaintiff, but may be ascertained
10 from Mercedes' books and records. Class members may be notified of the pendency of this action
11 by recognized, Court-approved notice dissemination methods, which may include U.S. mail,
12 electronic mail, Internet postings, and/or published notice.

13 79. **Commonality and Predominance**: Federal Rule of Civil Procedure 23(a)(2) and
14 23(b)(3): This action involves common questions of law and fact, which predominate over any
15 questions affecting individual Class members, including, without limitation:

- 16 a) Whether Mercedes engaged in the conduct alleged herein;
- 17 b) Whether Mercedes designed, advertised, marketed, distributed, leased, sold, or
18 otherwise placed Affected Vehicles into the stream of commerce in the United
19 States;
- 20 c) Whether the BlueTEC Clean Diesel engine system in the Affected Vehicles
21 emit pollutants at levels that do not make them "clean" diesels and that do not
22 comply with U.S. EPA requirements;
- 23 d) Whether the BlueTEC Clean Diesel engine systems in Affected Vehicles can
24 be made to comply with EPA standards without substantially degrading the
25 performance and/or efficiency of the Affected Vehicles;
- 26 e) Whether Mercedes knew about the unlawfully high emissions and, if so, how
27 long Mercedes has known;

- f) Whether Mercedes designed, manufactured, marketed, and distributed Affected Vehicles with defective or otherwise inadequate emission controls;
- g) Whether Mercedes' conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;
- h) Whether Plaintiff and the other Class members overpaid for their Affected Vehicles;
- i) Whether Plaintiff and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- j) Whether Plaintiff and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

80. **Typicality**: Federal Rule of Civil Procedure 23(a)(3): Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Mercedes' wrongful conduct as described above.

81. **Adequacy**: Federal Rule of Civil Procedure 23(a)(4): Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the other members of the Classes she seeks to represent; Plaintiff has retained counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiff and her counsel.

82. **Declaratory and Injunctive Relief**: Federal Rule of Civil Procedure 23(b)(2): Mercedes has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to each Class as a whole.

83. **Superiority**: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or

1 other financial detriment suffered by Plaintiff and the other Class members are relatively small
2 compared to the burden and expense that would be required to individually litigate their claims
3 against Mercedes, so it would be impracticable for the members of the Classes to individually seek
4 redress for Mercedes' wrongful conduct. Even if Class members could afford individual litigation,
5 the court system could not. Individualized litigation creates a potential for inconsistent or
6 contradictory judgments, and increases the delay and expense to all parties and the court system. By
7 contrast, the class action device presents far fewer management difficulties, and provides the benefits
8 of single adjudication, economy of scale, and comprehensive supervision by a single court.
9

10 **VIII. CLAIMS**

11 **A. Claims Brought on Behalf of the Nationwide Class and the New Jersey Subclass Under**
12 **New Jersey Law**

13 **COUNT I**

14 **VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT**
15 **(N.J.S.A. §§ 56:8-1, *et seq.*)**

16 84. Plaintiff incorporates by reference all preceding allegations as though fully set forth
17 herein.

18 85. Plaintiff brings this Count on behalf of the Nationwide Class and New Jersey
19 Subclass.

20 86. The New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.* ("NJ CFA"),
21 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

22 87. In the course of Mercedes' business, it willfully failed to disclose and actively
23 concealed that the NOx reduction system in the Affected Vehicles' turns off when ambient
24 temperatures drop below 50 degrees Fahrenheit, that the emissions controls were defective, and that
25 the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described
26 above. Accordingly, Mercedes engaged in unfair and deceptive trade practices, including
27 representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do
28 not have; representing that Affected Vehicles are of a particular standard and quality when they are

1 not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise
2 engaging in conduct likely to deceive. Further, Mercedes' acts and practices described herein offend
3 established public policy because the harm they cause to consumers, motorists, and pedestrians
4 outweighs any benefit associated with such practices, and because Mercedes fraudulently concealed
5 the defective nature of the Affected Vehicles from consumers.

6 88. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

7 89. Mercedes' conduct proximately caused injuries to Plaintiff and the other Class and
8 Subclass members.

9 90. Plaintiff and the other Class members were injured as a result of Mercedes' conduct in
10 that Plaintiff and the other Class members overpaid for their Affected Vehicles and did not receive
11 the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These
12 injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

13 91. Pursuant to N.J.S.A. § 56:8-20, Plaintiff will serve the New Jersey Attorney General
14 with a copy of this Complaint.

15 **COUNT II**

16 **BREACH OF CONTRACT**
17 **(BASED ON NEW JERSEY LAW)**

18 92. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

19 93. Plaintiff brings this Count on behalf of the Nationwide Class and New Jersey
20 Subclass.

21 94. Mercedes' misrepresentations and omissions alleged herein, including but not limited
22 to Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off
23 when ambient temperatures drop below 50 degrees Fahrenheit, caused Plaintiff and the other Class
24 members to make their purchases or leases of their Affected Vehicles. Absent those
25 misrepresentations and omissions, Plaintiff and the other Class members would not have purchased
26 or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the
27 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did
28 not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as

1 including such a system. Accordingly, Plaintiff and the other Class members overpaid for their
2 Affected Vehicles and did not receive the benefit of their bargain.

3 95. Each and every sale or lease of an Affected Vehicle constitutes a contract between
4 Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things,
5 selling or leasing to Plaintiff and the other New Jersey Class members defective Affected Vehicles
6 and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles
7 turns off when ambient temperatures drop below 50 degrees Fahrenheit, including information
8 known to Mercedes rendering each Affected Vehicle non EPA-compliant, and thus less valuable,
9 than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

10 96. As a direct and proximate result of Mercedes' breach of contract, Plaintiff and the
11 Class have been damaged in an amount to be proven at trial, which shall include, but is not limited
12 to, all compensatory damages, incidental and consequential damages, and other damages allowed by
13 law.

14 **COUNT III**

15 **FRAUDULENT CONCEALMENT**

16 97. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

17 98. Plaintiff brings this Count on behalf of the Nationwide Class and New Jersey
18 Subclass.

19 99. Mercedes intentionally concealed that the NOx reduction system in the Affected
20 Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit, that the Affected
21 Vehicles had defective emissions controls, emitted unlawfully high levels of pollutants such as NOx,
22 and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard
23 for the truth, and denied Plaintiff and the other Class members information that is highly relevant to
24 their purchasing decision.

25 100. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other
26 forms of communication, including standard and uniform material provided with each car, that the
27 Affected Vehicles it was selling had no significant defects, complied with EPA regulations, and
28 would perform and operate properly when driven in normal usage.

1 101. Mercedes knew these representations were false when made.

2 102. The Affected Vehicles purchased or leased by Plaintiff and the other Class members
3 were, in fact, defective, non-EPA compliant and unreliable because the NOx reduction system in the
4 Affected Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit.

5 103. Mercedes had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit, and that these
7 Affected Vehicles were defective, non-EPA compliant and unreliable in that they emitted unlawfully
8 high levels of pollutants, because Plaintiff and the other Class members relied on Mercedes' material
9 representations that the Affected Vehicles they were purchasing were reduced emission vehicles,
10 efficient, and free from defects.

11 104. The aforementioned concealment was material because if it had been disclosed,
12 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or
13 would not have bought or leased those Vehicles at the prices they paid.

14 105. The aforementioned representations were material because they were facts that would
15 typically be relied on by a person purchasing or leasing a new motor vehicle. Mercedes knew or
16 recklessly disregarded that its representations were false because it knew that the NOx reduction
17 system in the Affected Vehicles turns off when ambient temperatures drop below 50 degrees
18 Fahrenheit. Mercedes intentionally made the false statements in order to sell Affected Vehicles.

19 106. Plaintiff and the other Class members relied on Mercedes' reputation—along with
20 Mercedes' failure to disclose the defective nature of the BlueTEC Clean Diesel engine system and
21 Mercedes' affirmative assurance that its Affected Vehicles were reliable and reduced emissions
22 vehicles, and other similar false representations—in purchasing or leasing Mercedes' Affected
23 Vehicles.

24 107. As a result of their reliance, Plaintiff and the other Class members have been injured
25 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and
26 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

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1 108. Mercedes' conduct was knowing, intentional, with malice, demonstrated a complete
2 lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members.
3 Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

4 **B. Claims Brought on Behalf of the California Subclass**

5 **COUNT IV**

6 **FRAUD BY CONCEALMENT UNDER CALIFORNIA LAW**

7 109. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

8 110. This claim is brought on behalf of the California Subclass.

9 111. Mercedes designed, manufactured, marketed, sold, and/or leased Affected Vehicles to
10 Plaintiff and the Subclass members. Mercedes affirmatively misrepresented to Plaintiff and the
11 Subclass members in advertising and other forms of communication, including standard and uniform
12 material provided with each car, that the Affected Vehicles had no significant defects, complied with
13 EPA and state emissions regulations, and would perform and operate properly when driven in normal
14 usage.

15 112. The Affected Vehicles purchased or leased by Plaintiff and the Subclass members
16 were, in fact, defective, non-EPA compliant, and unreliable, because the NOx reduction system in
17 the Affected Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit.

18 113. Mercedes intentionally concealed, suppressed, and failed to disclose the facts that the
19 NOx reduction system in the Affected Vehicles turns off when ambient temperatures drop below 50
20 degrees Fahrenheit and that the Affected Vehicles had defective emissions controls, emitted
21 unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission
22 requirements.

23 114. As alleged in this complaint, at all relevant times, Mercedes has held out the Affected
24 Vehicles to be EPA-compliant reduced emissions vehicles. Mercedes disclosed certain details about
25 the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the
26 important facts that the NOx reduction system in the Affected Vehicles turns off when ambient
27 temperatures drop below 50 degrees Fahrenheit, and that the Affected Vehicles had defective
28

1 emissions controls, emitted unlawfully high levels of pollutants, and were non-compliant with EPA
2 emissions requirements, making other disclosures about the emission system deceptive.

3 115. The truth about the defective emissions controls, unlawfully high emissions, and non-
4 compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the
5 Subclass members did not know of these facts and Mercedes actively concealed these facts from
6 Plaintiff and Subclass members.

7 116. Plaintiff and Subclass members reasonably relied upon Mercedes' deception. They
8 had no way of knowing that Mercedes' representations were false and/or misleading. As consumers,
9 Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.
10 Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts
11 about the Affected Vehicle emissions.

12 117. Mercedes also concealed and suppressed material facts concerning what is evidently
13 the true culture of Mercedes—one characterized by an emphasis on profits and sales above
14 compliance with federal and state clean air law, and emissions regulations that are meant to protect
15 the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and
16 Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because
17 they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
18 environment. And yet, that is precisely what the Affected Vehicles are doing in cool weather.

19 118. Mercedes' false representations were material to consumers, because they concerned
20 the quality of the affected vehicles, because they concerned compliance with applicable federal and
21 state law and regulations regarding clean air and emissions, and also because the representations
22 played a significant role in the value of the vehicles. As Mercedes well knew, its customers,
23 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
24 leasing were clean diesel cars with reduced emissions, and they paid accordingly.

25 119. Mercedes had a duty to disclose the emissions defect, defective design of emissions
26 controls, and violations with respect to the Affected Vehicles because details of the true facts were
27 known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such
28 facts, and because Mercedes knew these facts were not known to or reasonably discoverable by

1 Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general
2 affirmative representations about the qualities of its vehicles with respect to emissions standards,
3 starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in
4 each country, which were misleading, deceptive, and incomplete without the disclosure of the
5 additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy
6 with respect to compliance with federal and state clean air law and emissions regulations, and its
7 actual practices with respect to the vehicles at issue. Having volunteered to provide information to
8 Plaintiff, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These
9 omitted and concealed facts were material because they directly impact the value of the Affected
10 Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's
11 products pollute, comply with federal and state clean air law and emissions regulations, and whether
12 that manufacturer tells the truth with respect to such compliance or non-compliance, are material
13 concerns to a consumer, including with respect to the emissions certifications testing their vehicles
14 must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or
15 leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective and
16 unlawfully high emission vehicles.

17 120. Mercedes actively concealed and/or suppressed these material facts, in whole or in
18 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
19 vehicles and did not or could not comply with federal and state laws governing clean air and
20 emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at
21 the expense of Plaintiff and Subclass members.

22 121. On information and belief, Mercedes has still not made full and adequate disclosures,
23 and continues to defraud Plaintiff and Subclass members by concealing material information
24 regarding the emissions qualities of its referenced vehicles.

25 122. Plaintiff and Subclass members were unaware of the omitted material facts referenced
26 herein, and they would not have acted as they did if they had known of the concealed and/or
27 suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars
28 manufactured by Mercedes, and/or would not have continued to drive their heavily polluting

1 vehicles, or would have taken other affirmative steps in light of the information concealed from
2 them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control
3 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
4 members.

5 123. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
6 members have sustained damage because they own vehicles that are diminished in value as a result
7 of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and
8 Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel
9 engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the
10 serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members
11 been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's
12 disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff
13 and Subclass members who purchased or leased new or certified previously owned vehicles would
14 have paid less for their vehicles or would not have purchased or leased them at all.

15 124. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
16 Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, and
17 of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA
18 emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to
19 Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase
20 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
21 vehicles.

22 125. Accordingly, Mercedes is liable to Plaintiff and Subclass members for damages in an
23 amount to be proven at trial.

24 126. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with
25 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
26 representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct
27 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
28 future, which amount is to be determined according to proof.

COUNT V

**VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

127. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

128. This claim is brought on behalf of the California Subclass.

129. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

130. Mercedes' conduct, as described herein, was and is in violation of the UCL. Mercedes' conduct violates the UCL in at least the following ways:

i. By failing to disclose that the NOx reduction system in the Affected Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit;

ii. By selling and leasing Affected Vehicles that suffer from a defective emissions control system and that emit unlawfully high levels of pollutants under normal driving conditions;

iii. By knowingly and intentionally concealing from Plaintiff and the other Subclass members that the NOx reduction system in the Affected Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit and that the Affected Vehicles suffer from a defective emissions control system and emit unlawfully high levels of pollutants under normal driving conditions;

iv. By marketing Affected Vehicles as reduced emissions vehicles possessing functional and defect-free, EPA-compliant diesel engine systems;

v. By deceptively obtaining EPA certification for Affected Vehicles;

vi. By violating federal laws, including the Clean Air Act; and

vii. By violating other California laws, including California consumer protection laws and California laws governing vehicle emissions and emission testing requirements.

131. Mercedes' misrepresentations and omissions alleged herein caused Plaintiff and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Subclass members would not have

1 purchased or leased these vehicles, would not have purchased or leased these Affected Vehicles at
2 the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that
3 did not contain defective BlueTEC Clean Diesel engine systems that failed to comply with EPA and
4 California emissions standards.

5 132. Accordingly, Plaintiff and the other Subclass members have suffered injury in fact,
6 including lost money or property, as a result of Mercedes' misrepresentations and omissions.

7 133. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by
8 Mercedes under Cal. Bus. & Prof. Code § 17200.

9 134. Plaintiff requests that this Court enter such orders or judgments as may be necessary
10 to enjoin Mercedes from continuing its unfair, unlawful, and/or deceptive practices and to restore to
11 Plaintiff and members of the Subclass any money it acquired by unfair competition, including
12 restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and
13 Cal. Civ. Code § 3345; and for such other relief set forth below.

14 **COUNT VI**

15 **VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT**
16 **(CAL. CIV. CODE §§ 1750, *et seq.*)**

17 135. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

18 136. This claim is brought on behalf of the California Subclass.

19 137. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et*
20 *seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken
21 by any person in a transaction intended to result or which results in the sale or lease of goods or
22 services to any consumer."

23 138. The Affected Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

24 139. Plaintiff and the other Subclass members are "consumers" as defined in Cal. Civ.
25 Code § 1761(d), and Plaintiff, the other Subclass members, and Mercedes are "persons" as defined in
26 Cal. Civ. Code § 1761(c).

27 140. As alleged above, Mercedes made representations concerning the benefits, efficiency,
28 performance and safety features of the BlueTEC Clean Diesel engine systems that were misleading.

1 141. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
2 members were deceived by Mercedes' failure to disclose that the NOx reduction system in the
3 Affected Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit and that
4 the Affected Vehicles were equipped with defective BlueTEC Clean Diesel engine systems that
5 failed EPA and California emissions standards.

6 142. Mercedes' conduct, as described hereinabove, was and is in violation of the CLRA.
7 Mercedes' conduct violates at least the following enumerated CLRA provisions:

- 8 i. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of
9 goods.
- 10 ii. Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by another.
- 11 iii. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship,
12 approval, characteristics, uses, benefits, or quantities which they do not have.
- 13 iv. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular
14 standard, quality, or grade, if they are of another.
- 15 v. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as
16 advertised.
- 17 vi. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in
18 accordance with a previous representation when they have not.

19 143. Plaintiff and the other Subclass members have suffered injury in fact and actual
20 damages resulting from Mercedes' material omissions and misrepresentations and sale of Affected
21 Vehicles with defective emissions controls because they paid an inflated purchase or lease price for
22 the Affected Vehicles and because they stand to pay additional fuel costs if and when their Affected
23 Vehicles are made to comply with emissions standards.

24 144. Mercedes knew, should have known, or was reckless in not knowing of the defective
25 design and/or manufacture of the BlueTEC Clean Diesel engine systems, and that the Affected
26 Vehicles were not suitable for their intended use.

27 145. The facts concealed and omitted by Mercedes to Plaintiff and the other Subclass
28 members are material in that a reasonable consumer would have considered them to be important in

1 deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had Plaintiff and
2 the other Subclass members known about the defective nature of the Affected Vehicles, and their
3 non-compliance with EPA requirements, they would not have purchased or leased the Affected
4 Vehicles or would not have paid the prices they paid.

5 146. Plaintiff and the Subclass have provided Mercedes with notice of its violations of the
6 CLRA pursuant to Cal. Civ. Code § 1782(a). The notice was transmitted to Mercedes on February
7 19, 2016.

8 147. Plaintiff's and the other Subclass members' injuries were proximately caused by
9 Mercedes' unlawful and deceptive business practices.

10 148. In accordance with Cal. Civ. Code § 1780(a), Plaintiff and members of the Subclass
11 seek injunctive relief for Mercedes' violations of the CLRA.

12 149. While Plaintiff and the Subclass do not seek to recover damages under the CLRA in
13 this initial Complaint, after mailing appropriate notice and demand in accordance with Civil Code
14 § 1782(a) & (d), Plaintiff will subsequently amend this Complaint to also include a request for
15 compensatory and punitive damages.

16 **COUNT VII**

17 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW**
18 **(CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)**

19 150. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

20 151. This claim is brought on behalf of the California Subclass.

21 152. California Bus. & Prof. Code § 17500 states: "It is unlawful for any ... corporation
22 ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to
23 enter into any obligation relating thereto, to make or disseminate or cause to be made or
24 disseminated ... from this state before the public in any state, in any newspaper or other publication,
25 or any advertising device, ... or in any other manner or means whatever, including over the Internet,
26 any statement ... which is untrue or misleading, and which is known, or which by the exercise of
27 reasonable care should be known, to be untrue or misleading."
28

1 153. Mercedes caused to be made or disseminated through California and the United
2 States, through advertising, marketing and other publications, statements that were untrue or
3 misleading, and which were known, or which by the exercise of reasonable care should have been
4 known to Mercedes, to be untrue and misleading to consumers, including Plaintiff and the other
5 Subclass members.

6 154. Mercedes has violated § 17500 because the misrepresentations and omissions
7 regarding the functionality, reliability, environmental-friendliness, lawfulness, and safety of Affected
8 Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

9 155. Plaintiff and the other Subclass members have suffered an injury in fact, including the
10 loss of money or property, as a result of Mercedes' unfair, unlawful, and/or deceptive practices. In
11 purchasing or leasing their Affected Vehicles, Plaintiff and the other Subclass members relied on the
12 misrepresentations and/or omissions of Mercedes with respect to the functionality, reliability,
13 environmental-friendliness, lawfulness, and safety of the Affected Vehicles. Mercedes'
14 representations turned out not to be true because the NOx reduction system in the Affected Vehicles
15 turns off when ambient temperatures drop below 50 degrees Fahrenheit and the Affected Vehicles
16 are distributed with BlueTEC Clean Diesel engine systems that include defective emissions controls.
17 Had Plaintiff and the other Subclass members known this, they would not have purchased or leased
18 their Affected Vehicles and/or paid as much for them. Accordingly, Plaintiff and the other Subclass
19 members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

20 156. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
21 conduct of Mercedes' business. Mercedes' wrongful conduct is part of a pattern or generalized
22 course of conduct that is still perpetuated and repeated, both in the State of California and
23 nationwide.

24 157. Plaintiff, individually and on behalf of the other Subclass members, requests that this
25 Court enter such orders or judgments as may be necessary to enjoin Mercedes from continuing their
26 unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and the other Subclass
27 members any money Mercedes acquired by unfair competition, including restitution and/or
28 restitutionary disgorgement, and for such other relief set forth below.

COUNT VIII

**BREACH OF CONTRACT
(BASED ON CALIFORNIA LAW)**

1
2
3 158. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

4
5 159. Plaintiff brings this Count on behalf of the California Subclass members.

6
7 160. Mercedes' misrepresentations and omissions alleged herein, including Mercedes'
8 failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective
9 design of emissions controls as alleged herein, caused Plaintiff and the other Subclass members to
10 make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and
11 omissions, Plaintiff and the other Subclass members would not have purchased or leased these
12 Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they
13 paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain
14 the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a
15 system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles
16 and did not receive the benefit of their bargain.

17 161. Each and every sale or lease of an Affected Vehicle constitutes a contract between
18 Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to
19 Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or
20 failing to disclose that the NOx reduction system in the Affected Vehicles turns off when ambient
21 temperatures drop below 50 degrees Fahrenheit and the existence of the BlueTEC Clean Diesel
22 engine system's defect and/or defective design of emissions controls, including information known
23 to Mercedes rendering each Affected Vehicle non EPA-compliant, and thus less valuable, than
24 vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

25 162. As a direct and proximate result of Mercedes' breach of contract, Plaintiff and the
26 Subclass have been damaged in an amount to be proven at trial, which shall include, but is not
27 limited to, all compensatory damages, incidental and consequential damages, and other damages
28 allowed by law.

1 **C. Breach of Contract Claims Brought on Behalf of the Remaining State Subclasses**

2 **COUNT IX**

3 **BREACH OF CONTRACT**

4 163. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

5 164. Plaintiff brings this Count on behalf of state subclass members except the New Jersey
6 and California state subclasses.

7 165. Mercedes' misrepresentations and omissions alleged herein, including but not limited
8 to Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off
9 when ambient temperatures drop below 50 degrees Fahrenheit, caused Plaintiff and the other Class
10 members to make their purchases or leases of their Affected Vehicles. Absent those
11 misrepresentations and omissions, Plaintiff and the other Class members would not have purchased
12 or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the
13 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did
14 not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as
15 including such a system. Accordingly, Plaintiff and the other Class members overpaid for their
16 Affected Vehicles and did not receive the benefit of their bargain.

17 166. Each and every sale or lease of an Affected Vehicle constitutes a contract between
18 Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things,
19 selling or leasing to Plaintiff and the other New Jersey Class members defective Affected Vehicles
20 and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles
21 turns off when ambient temperatures drop below 50 degrees Fahrenheit, including information
22 known to Mercedes rendering each Affected Vehicle non EPA-compliant, and thus less valuable,
23 than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

24 167. As a direct and proximate result of Mercedes' breach of contract, Plaintiff and the
25 Class have been damaged in an amount to be proven at trial, which shall include, but is not limited
26 to, all compensatory damages, incidental and consequential damages, and other damages allowed by
27 law.

1 **D. Unfair and Deceptive Trade Practices Act Claims Brought on Behalf of 36 State**
2 **Subclasses and the District of Columbia Subclass**

3 **COUNT X**

4 **VIOLATIONS OF THE UNFAIR AND DECEPTIVE TRADE PRACTICES ACTS**
5 **OF 36 STATES AND THE DISTRICT OF COLUMBIA**

6 168. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

7 169. Plaintiff brings this Count on behalf of the subclasses associated with the states
8 identified below in the next paragraph immediately *infra*.

9 170. Mercedes' conduct described herein constitutes prohibited practices, unfair, deceptive
10 and unconscionable conduct under the unfair and deceptive trade practices acts of 36 states and the
11 District of Columbia, as follows:

12 a. Alaska: The aforementioned practices by Mercedes were and are in violation
13 of the Alaska Unfair Trade Practices and Consumer Protection Act, Ala. Code § 45.50.471, *et seq.*;

14 b. Arkansas: The aforementioned practices by Mercedes were and are in
15 violation of the Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;

16 c. Colorado: The aforementioned practices by Mercedes were and are in
17 violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;

18 d. Connecticut: The aforementioned practices by Mercedes were and are in
19 violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;

20 e. Delaware: The aforementioned practices by Mercedes were and are in
21 violation of the Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;

22 f. District of Columbia: The aforementioned practices by Mercedes were and
23 are in violation of the District of Columbia Consumer Protection Procedures Act, D.C. Code §
24 28-3901, *et seq.*;

25 g. Florida: The aforementioned practices by Mercedes were and are in violation
26 of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;

27 h. Georgia: The aforementioned practices by Mercedes were and are in violation
28 of the Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;

1 i. Hawaii: The aforementioned practices by Mercedes were and are in violation
2 of Hawaii's Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480-1, *et seq.*, and
3 Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;

4 j. Idaho: The aforementioned practices by Mercedes were and are in violation of
5 the Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;

6 k. Illinois: The aforementioned practices by Mercedes were and are in violation
7 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;

8 l. Kansas: The aforementioned practices by Mercedes were and are in violation
9 of the Kansas Consumer Protection Act, Kan. Stat. Ann § 50-626, *et seq.*;

10 m. Kentucky: The aforementioned practices by Mercedes were and are in
11 violation of the Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*, and the
12 Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020, *et seq.*;

13 n. Louisiana: The aforementioned practices by Mercedes were and are in
14 violation of the Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann.
15 § 51:1401, *et seq.*;

16 o. Maine: The aforementioned practices by Mercedes were and are in violation
17 of the Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform
18 Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;

19 p. Maryland: The aforementioned practices by Mercedes were and are in
20 violation of the Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;

21 q. Massachusetts: The aforementioned practices by Mercedes were and are in
22 violation of the Massachusetts Unfair and Deceptive Practices Act, Mass. Ann. Laws ch. 93A, *et*
23 *seq.*;

24 r. Michigan: The aforementioned practices by Mercedes were and are in
25 violation of the Michigan Consumer Protection Act, § 445.901, *et seq.*;

26 s. Minnesota: The aforementioned practices by Mercedes were and are in
27 violation of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat § 325F.68, *et seq.*; and
28 Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;

1 t. Mississippi: The aforementioned practices by Mercedes were and are in
2 violation of the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;

3 u. Missouri: The aforementioned practices by Mercedes were and are in
4 violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;

5 v. Montana: The aforementioned practices by Mercedes were and are in
6 violation of the Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code § 30-14-
7 101, *et seq.*;

8 w. Nebraska: The aforementioned practices by Mercedes were and are in
9 violation of the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.*, and the
10 Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;

11 x. Nevada: The aforementioned practices by Mercedes were and are in violation
12 of the Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. § 598.0903, *et seq.*;

13 y. New Hampshire: The aforementioned practices by Mercedes were and are in
14 violation of the New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;

15 z. New Mexico: The aforementioned practices by Mercedes were and are in
16 violation of the New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*;

17 aa. New York: The aforementioned practices by Mercedes were and are in
18 violation of the New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349, *et seq.*;

19 bb. North Dakota: The aforementioned practices by Mercedes were and are in
20 violation of the North Dakota Consumer Fraud Act, N.D. Cent. Code § 51-15-01, *et seq.*;

21 cc. Oklahoma: The aforementioned practices by Mercedes were and are in
22 violation of the Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;

23 dd. Oregon: The aforementioned practices by Mercedes were and are in violation
24 of the Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;

25 ee. Rhode Island: The aforementioned practices by Mercedes were and are in
26 violation of the Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws
27 § 6-13.1-1, *et seq.*;

28

1 ff. South Carolina: The aforementioned practices by Mercedes were and are in
2 violation of the South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;

3 gg. South Dakota: The aforementioned practices by Mercedes were and are in
4 violation of South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified
5 Laws § 37-24-1, *et seq.*;

6 hh. Vermont: The aforementioned practices by Mercedes were and are in
7 violation of the Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, § 2451, *et seq.*;

8 ii. Virginia: The aforementioned practices by Mercedes were and are in violation
9 of the Virginia Consumer Protection Act, Va. Code Ann. § 59.1-196, *et seq.*;

10 jj. Washington: The aforementioned practices by Mercedes were and are in
11 violation of the Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;

12 kk. West Virginia: The aforementioned practices by Mercedes were and are in
13 violation of the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-
14 101, *et seq.*;

15 ll. Wisconsin: The aforementioned practices by Mercedes were and are in
16 violation of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18, *et seq.*

17 171. Under statutes enacted in New Jersey and 36 other states, and the District of
18 Columbia, to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and
19 business practices and false advertising, Plaintiff and Subclass members are consumers who
20 purchased Mercedes' defective Affected Vehicles pursuant to a consumer transaction for personal
21 use and are therefore subject to protection under such legislation.

22 172. Under statues enacted in New Jersey and 36 other states, and the District of Columbia,
23 to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business
24 practices and false advertising, Mercedes is a supplier, manufacturer, advertiser, and seller who is
25 subject to liability under such legislation for unfair, deceptive, fraudulent and unconscionable
26 consumer sales practices.

27 173. Mercedes violated the statutes enacted in New Jersey and 36 other states, and the
28 District of Columbia, to protect consumers against unfair, deceptive, fraudulent and unconscionable

1 trade and business practices and false advertising, by knowingly and falsely representing that the
2 Affected Vehicles were “Clean Diesels” with low emissions, when in fact they were not, and by
3 other acts alleged herein. These representations were made in uniform promotional materials.

4 174. Mercedes violated the statutes enacted in New Jersey and 36 other states, and the
5 District of Columbia, to protect consumers against unfair, deceptive, fraudulent and unconscionable
6 trade and business practices and false advertising, by willfully failing to disclose and actively
7 concealing that the NOx reduction system in the Affected Vehicles turns off when ambient
8 temperatures drop below 50 degrees Fahrenheit, that the emissions controls were defective and that
9 the Affected Vehicles emitted unlawfully high levels of pollutants, including NOX, as described
10 above.

11 175. The actions of Mercedes alleged herein are uncured or incurable deceptive acts under
12 the statutes enacted in New Jersey and 36 other states, and the District of Columbia, to protect
13 consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and
14 false advertising.

15 176. Mercedes had actual knowledge of the defective condition of its BlueTEC Clean
16 Diesel engine system, and failed to take any action to cure such defective condition or to adequately
17 inform Plaintiff or the Class of material information regarding the performance of its BlueTEC Clean
18 Diesel engine system, well in excess of thirty (30) days before the Plaintiff or any Class member did
19 or could have possessed any such knowledge.

20 177. As a direct result of Mercedes’ violations of the statutes enacted in New Jersey and 36
21 other states, and the District of Columbia, to protect consumers against unfair, deceptive, fraudulent
22 and unconscionable trade and business practices and false advertising, Plaintiff and members of the
23 Class have been damaged.

24 178. Plaintiff and members of the Class are therefore entitled to and hereby seek
25 compensatory damages, multiple damages, and equitable and declaratory relief and any and all other
26 available remedies according to proof.

1 **E. Fraudulent Concealment Claims Brought on Behalf of the Remaining State Subclasses**

2 **COUNT XI**

3 **FRAUDULENT CONCEALMENT**

4 179. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

5 180. Plaintiff brings this Count on behalf of state subclass members except the New Jersey
6 and California state subclasses.

7 181. Mercedes intentionally concealed that the NOx reduction system in the Affected
8 Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit, that the Affected
9 Vehicles had defective emissions controls, emitted unlawfully high levels of pollutants such as NOx,
10 and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard
11 for the truth, and denied Plaintiff and the other Class members information that is highly relevant to
12 their purchasing decision.

13 182. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other
14 forms of communication, including standard and uniform material provided with each car, that the
15 Affected Vehicles it was selling had no significant defects, complied with EPA regulations, and
16 would perform and operate properly when driven in normal usage.

17 183. Mercedes knew these representations were false when made.

18 184. The Affected Vehicles purchased or leased by Plaintiff and the other Class members
19 were, in fact, defective, non-EPA compliant and unreliable because the NOx reduction system in the
20 Affected Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit.

21 185. Mercedes had a duty to disclose that the NOx reduction system in the Affected
22 Vehicles turns off when ambient temperatures drop below 50 degrees Fahrenheit, and that these
23 Affected Vehicles were defective, non-EPA compliant and unreliable in that they emitted unlawfully
24 high levels of pollutants, because Plaintiff and the other Class members relied on Mercedes' material
25 representations that the Affected Vehicles they were purchasing were reduced emission vehicles,
26 efficient, and free from defects.

1 186. The aforementioned concealment was material because if it had been disclosed
2 Plaintiff and the other Class members would not have bought or leased the Affected Vehicles, or
3 would not have bought or leased those Vehicles at the prices they paid.

4 187. The aforementioned representations were material because they were facts that would
5 typically be relied on by a person purchasing or leasing a new motor vehicle. Mercedes knew or
6 recklessly disregarded that its representations were false because it knew that the NOx reduction
7 system in the Affected Vehicles turns off when ambient temperatures drop below 50 degrees
8 Fahrenheit. Mercedes intentionally made the false statements in order to sell Affected Vehicles.

9 188. Plaintiff and the other Class members relied on Mercedes' reputation—along with
10 Mercedes' failure to disclose the defective nature of the BlueTEC Clean Diesel engine system and
11 Mercedes' affirmative assurance that its Affected Vehicles were reliable and reduced emissions
12 vehicles, and other similar false representations—in purchasing or leasing Mercedes' Affected
13 Vehicles.

14 189. As a result of their reliance, Plaintiff and the other Class members have been injured
15 in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and
16 overpayment at the time of purchase or lease and/or the diminished value of their Affected Vehicles.

17 190. Mercedes' conduct was knowing, intentional, with malice, demonstrated a complete
18 lack of care, and was in reckless disregard for the rights of Plaintiff and the other Class members.
19 Plaintiff and the other Class members are therefore entitled to an award of punitive damages.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of members of the Nationwide Class and
22 State Subclasses, respectfully requests that the Court enter judgment in their favor and against
23 Mercedes, as follows:

24 A. Certification of the proposed Nationwide Class and State Subclasses, including
25 appointment of Plaintiff's counsel as Class Counsel;

26 B. An order temporarily and permanently enjoining Mercedes from continuing the
27 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

28 C. Injunctive relief in the form of a recall or free replacement program;

1 D. Restitution, including at the election of Class members, recovery of the purchase price
2 of their Affected Vehicles, or the overpayment or diminution in value of their Affected Vehicles;

3 E. Damages, including punitive damages, costs, and disgorgement in an amount to be
4 determined at trial, except that monetary relief under certain consumer protection statutes, as stated
5 above, shall be limited prior to completion of the applicable notice requirements;

6 F. An order requiring Mercedes to pay both pre- and post-judgment interest on any
7 amounts awarded;

8 G. An award of costs and attorneys' fees; and

9 H. Such other or further relief as may be appropriate.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial for all claims so triable.

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14 DATED: February 19, 2016.

15 HAGENS BERMAN SOBOL SHAPIRO LLP

16
17 By: /s/ Jeff D. Friedman

Jeff D. Friedman

715 Hearst Avenue, Suite 202

Berkeley, CA 94710

Telephone: (510) 725-3000

Facsimile: (510) 725-3001

jefff@hbsslaw.com

18
19
20 Steve W. Berman (*pro hac vice pending*)

Sean R. Matt (*pro hac vice pending*)

HAGENS BERMAN SOBOL SHAPIRO LLP

1918 Eighth Avenue, Suite 3300

Seattle, WA 98101

21 Telephone: (206) 623-7292

22 Facsimile: (206) 623-0594

23 steve@hbsslaw.com

24 sean@hbsslaw.com
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Jeffrey S. Goldenberg (*pro hac vice pending*)
GOLDENBERG SCHNEIDER, L.P.A.
One West Fourth Street, 18th Floor
Cincinnati, OH 45202-3604
Telephone: (513) 345-4291
Facsimile: (513) 345-8294
JGoldenberg@gs-legal.com

Attorneys for Plaintiff and the Proposed Classes

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GWENDOLYN ANDARY, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Mateo (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) HAGENS BERMAN SOBOL SHAPIRO LLP 715 Hearst Avenue, Suite 202, Berkeley, CA 94710 Telephone: (510) 725-3000

DEFENDANTS

MERCEDES-BENZ USA, LLC, a Delaware Limited Liability Company

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d); 28 U.S.C. § 1367. Brief description of cause: Fraudulent Concealment of Vehicle Defect

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/19/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Jeff D. Friedman

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.