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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GWENDOLYN ANDARY, ANTHONY
CAPUTO, LARS DANNBERG, ARTHUR
DASCHKE, ANDREW DEUTSCH, SEID
DILGISIC, WENDELL DINGLE, DEVIN
DOWNS, JAMES EDWARDS, DARRELL
FELLER, BILLY FOX, JR., GUSTAVO
FRAGA-ERRECART, TERRY GARMEY,
CHRISTOPHER GATES, KEITH HALL,
BOBBY HAMILTON, PAUL HERRMANN,
FREDDIE T. HOLBROOK, SHELBY A.
JORDAN, TIFFANY KNIGHT, JOHN
LAURINO, JOHN LINGUA, ULYANA
LYNEVYCH, GINA McVEY, MICHAEL
MEDLER, MARYANA MELNYK, VINCENT
MINERVA, SCOTT MORGAN, JONATHAN
MOSE, A. ERIC NGWASHI, BRENDA
O'NEAL, CHANDRAKANT PATEL, SHELIA
REED, CATHERINE ROBERTS, DR.

Civil Action No. 16-881(JLL)(JAD)

**CONSOLIDATED AND AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

ADRIAN CLIVE ROBERTS, RANDOLPH
ROLLE, HENRY SILVERIO, BRADFORD
SMITH, CRAIG THORSON, LORRIE VIDAL,
DEDRICK WATKINS, THOMAS WEISS,
CHARLES WOLFORD, RICHARD YANUS,
DONG H. YUN, and HASSAN ZAVAREEI on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

MERCEDES-BENZ USA, LLC, a Delaware
Limited Liability Company, DAIMLER AG, a
foreign corporation,

Defendants.

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Plaintiffs Gwendolyn Andary, Anthony Caputo, Lars Dannberg, Arthur Daschke, Andrew Deutsch, Seid Dilgicic, Wendell Dingle, Devin Downs, James Edwards, Darrell Feller, Billy Fox, Jr., Gustavo Fraga-Errecart, Terry Garney, Christopher Gates, Keith Hall, Bobby Hamilton, Paul Herrmann, Freddie T. Holbrook, Shelby A. Jordan, Tiffany Knight, John Laurino, John Lingua, Ulyana Lynevych, Gina Mcvey, Michael Medler, Maryana Melnyk, Vincent Minerva, Scott Morgan, Jonathan Mose, A. Eric Ngwashi, Brenda O'neal, Chandrakant Patel, Shelia Reed, Catherine Roberts, Dr. Adrian Clive Roberts, Randolph Rolle, Henry Silverio, Bradford Smith, Craig Thorson, Lorrie Vidal, Dedrick Watkins, Thomas Weiss, Charles Wolford, Richard Yanus, Dong H. Yun, and Hassan Zavareei, individually and on behalf of all others similarly situated (the "Class"), allege the following based upon the investigation of counsel, the review of scientific papers, and the investigation of experts:

I. INTRODUCTION

1. In the wake of the major scandal involving Volkswagen and Audi diesel vehicles evading emissions standards with the help of certain software that turns off emissions controls when the vehicles are not being tested, reports and vehicle testing now indicate that Mercedes-Benz USA, LLC's and Daimler AG's (collectively, "Mercedes") so called "Clean Diesel" vehicles emit far more pollution on the road than in lab tests and that these vehicles exceed federal and state emission standards. Real world testing has recently revealed that these vehicles emit dangerous oxides of nitrogen (NOx) at levels *many times higher than (i) their gasoline counterparts, (ii) what a reasonable consumer would expect from a "Clean Diesel," and (iii) United States Environmental Protection Agency maximum standards.* The Mercedes "Clean Diesel" turns out to be far from "clean."

2. Diesel engines pose a difficult challenge to the environment because they have an inherent trade-off between power, fuel efficiency, and emissions. Compared to gasoline engines,

diesel engines generally produce greater torque, low-end power, better drivability and much higher fuel efficiency. But these benefits come at the cost of much dirtier and more harmful emissions.

3. One by-product of diesel combustion is NO_x, which generally describes several compounds comprised of nitrogen and oxygen atoms. These compounds are formed in the cylinder of the engine during the high temperature combustion process. NO_x pollution contributes to nitrogen dioxide, particulate matter in the air, and reacts with sunlight in the atmosphere to form ozone. Exposure to these pollutants has been linked with serious health dangers, including serious respiratory illnesses and premature death due to respiratory-related or cardiovascular-related effects. The United States Government, through the Environmental Protection Agency (EPA), has passed and enforced laws designed to protect United States citizens from these pollutants and 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.

4. In order to produce a diesel engine that has desirable torque and power characteristics, good fuel economy, and emissions levels low enough to meet the stringent European and United States governmental emission standards, Mercedes developed the BlueTEC™ diesel engine. The BlueTEC name is a general trade name used to describe a number of in-cylinder and after-treatment technologies used to reduce emissions. The primary emission control after-treatment technologies include a diesel particulate filter (DPF) and a selective catalytic reduction (SCR) system. The DPF traps and removes particulate (soot) emissions, while the SCR system facilitates a chemical reaction to reduce NO_x into less harmful substances, such as nitrogen and oxygen.

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

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

7. These representations are deceptive and false. Mercedes has programmed its BlueTEC vehicles to turn off or otherwise limit the effectiveness of the emission reduction systems during real-world driving.

8. Mercedes recently admitted that a shut-off device in the engine management of certain BlueTEC diesel cars stops NOx cleaning when ambient temperatures drop below 50 degrees Fahrenheit and under other, unspecified circumstances. Testing at highway speeds, at low temperatures, and at variable speeds, indicate a systemic failure to meet emissions standards. Low temperature testing at highway speeds, for example, produced emissions that were 8.1 to 19.7 times the highway emissions standard. Testing at low temperatures at variable speeds produced emissions as high as 30.8 times the standard.

9. But the Mercedes emissions “shut off device” goes well beyond when the temperature drops below 50 degrees Fahrenheit. Testing has also revealed that Mercedes BlueTEC vehicles do not meet emission standards in virtually *all* real world driving conditions.

In virtually every road test at a variety of speeds and temperatures, the emissions exceeded emissions standards.

10. Testing also reveals that Mercedes intentionally defeats emissions controls when the BlueTEC vehicles are on the road. Plaintiffs' testing revealed that, while the Mercedes BlueTEC vehicle's on-road emissions were very high and exceeded federal standards, the same vehicle when tested on a dynamometer using EPA testing protocols had low emissions and either passed the tests, or were within a close margin of doing so. This contrast demonstrates that Mercedes has programmed its emission systems to reduce effectiveness or turn off altogether when the vehicle is on the road. And this means that when Mercedes cars are tested in the laboratory, they use a defeat device to obtain test results that appear to pass emissions standards.

11. A "defeat device" as defined by the EPA means an auxiliary emission control device ("AECD") that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal use. 40 CFR 86.004-2. Thus, Mercedes has perpetrated a gross deception on Plaintiffs and members of the proposed Class, who Mercedes told were buying low-emission, efficient, earth-friendly vehicles.

12. Mercedes manufactures, designs, markets, sells, and leases certain "BlueTEC Clean Diesel" vehicles as if they were "reduced emissions" cars that comply with all applicable regulatory standards, when in fact, these Mercedes vehicles are not "clean diesels" and emit more pollutants than allowed by federal and state laws—and far more than their gasoline fueled counterparts and far more than what a reasonable consumer would expect from a "Clean Diesel".

13. On information and belief, Plaintiffs allege that the following Mercedes models powered by BlueTEC diesel fueled engines are affected by the unlawful, unfair, deceptive, and otherwise defective emission controls utilized by Mercedes: 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 (the Affected Vehicles).

14. Mercedes never disclosed to consumers that Mercedes diesels with BlueTEC engines may be “clean” diesels in very limited circumstances, but are “dirty” diesels under most driving conditions. Mercedes never disclosed that it prioritizes engine power and profits over people. Mercedes never disclosed that its vehicles emissions materially exceed the emissions from gasoline powered vehicles, that the emissions exceeded what a reasonable consumer would expect from a “Clean Diesel,” and that its vehicles emissions materially exceed applicable emissions limits in real world driving conditions.

15. Plaintiffs bring this action individually and on behalf of all other current and former owners or lessees of Affected Vehicles. Plaintiffs seek damages and equitable relief for Mercedes’ misconduct related to the design, manufacture, marketing, sale, and lease of Affected Vehicles with unlawfully high emissions, as alleged in this Complaint.

II. JURISDICTION

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

III. VENUE

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

IV. PARTIES

A. Plaintiffs

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

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

1. New Jersey Plaintiff

20. Plaintiff ANTHONY CAPUTO (for the purpose of this paragraph, "Plaintiff") is a citizen of New Jersey domiciled in Mt. Arlington, New Jersey. On or about November 9, 2011, Plaintiff purchased a new 2012 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the "Affected Vehicle"), from Mercedes of Caldwell in Caldwell, New Jersey. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a "Clean Diesel", at many times the level a reasonable consumer would expect from a "Clean Diesel", and at many multiples of that allowed by federal law. Mercedes' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 without proper emission controls has caused Plaintiff out-of-

pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

2. Alabama Plaintiff

21. Plaintiff JONATHAN MOSE (for the purpose of this paragraph, “Plaintiff”) is a citizen of Alabama domiciled in Mobile, Alabama. On or about February 2013, Plaintiff purchased a used 2007 Mercedes E350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Baehr’s Automobile in Mobile, Alabama. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system

during normal driving conditions and emitted pollutants such as NO_x at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the E350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the E350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

3. Arizona Plaintiff

22. Plaintiff LORRIE VIDAL (for the purpose of this paragraph, “Plaintiff”) is a citizen of California domiciled in Redondo Beach, California. On or about November 29, 2013,

Plaintiff purchased a new 2014 Mercedes GL 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Phoenix Motor Co. in Phoenix, Arizona. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NO_x at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GL 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the

GL 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

4. California Plaintiffs

23. Plaintiff CATHERINE ROBERTS (for the purpose of this paragraph, “Plaintiff”) is a citizen of Vermont domiciled in Montpelier, Vermont. On or about February 2, 2016, Plaintiff purchased a used 2012 Mercedes Sprinter BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), in Fresno, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NO_x at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Sprinter without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the

environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the Sprinter actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

24. Plaintiff GWENDOLYN ANDARY (for the purpose of this paragraph, “Plaintiff”) is a citizen of Half Moon Bay, California and domiciled in Half Moon Bay, California. In July 2013, Plaintiff purchased a new, model year 2013 Mercedes GLK 250 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Walter’s Automotive, an authorized Mercedes dealer in Riverside, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GLK 250 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the

reasonable, but mistaken, belief that her vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GLK 250 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

25. Plaintiff DR. ADRIAN CLIVE ROBERTS (for the purpose of this paragraph, “Plaintiff”) is a citizen of New Jersey domiciled in Princeton, New Jersey. On or about February 25, 2012, Plaintiff purchased a used 2009 Mercedes ML 320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Smothers European Mercedes of Santa Rosa in Santa Rosa, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NO_x at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many

multiples of that allowed by federal law. Mercedes' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 320 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel" as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 320 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

26. Plaintiff BRADFORD SMITH (for the purpose of this paragraph, "Plaintiff") is a citizen of California domiciled in Temecula, California. On or about April 17, 2015, Plaintiff purchased a used 2013 Mercedes E350 BlueTEC (for the purpose of this paragraph, the

“Affected Vehicle”), from Fletcher Jones Mercedes in Temecula, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NO_x at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the E350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the E350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level

than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

5. Colorado Plaintiffs

27. Plaintiff KEITH HALL (for the purpose of this paragraph, “Plaintiff”) is a citizen of Colorado domiciled in Arvada, Colorado. On or about December 26, 2014, Plaintiff purchased a used 2011 Mercedes S Class BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from a private seller in Denver, Colorado. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NO_x at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the S Class without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the

advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the S Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

28. Plaintiff GINA McVEY (for the purpose of this paragraph, “Plaintiff”) is a citizen of Oklahoma domiciled in Chandler, Oklahoma. On or about August 1, 2014, Plaintiff purchased a new 2014 Mercedes GLK Class BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes Benz of Littleton Colorado in Littleton, Colorado. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GLK without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and

would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GLK Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

6. Connecticut Plaintiff

29. Plaintiff JOHN LINGUA (for the purpose of this paragraph, “Plaintiff”) is a citizen of Connecticut domiciled in Windsor Locks, Connecticut. On or about July 10, 2015, Plaintiff purchased a new 2015 Mercedes ML250 BlueTEC and in or about September 2013, Plaintiff purchased a new 2014 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicles”), from New Country Mercedes in Hartford, Connecticut. Plaintiff purchased, and still owns, the vehicles. Unknown to Plaintiff, at the time the vehicles were purchased, they were equipped with an emissions system that turned off or limited their emissions reduction systems during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing,

manufacturing, marketing, selling, and leasing the ML 250 and ML 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicles. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicles on the reasonable, but mistaken, belief that his vehicles were “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout their useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicles, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicles had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 250 and ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicles, or would have paid less for them.

7. Delaware Plaintiff

30. Plaintiff BILLY FOX, JR. (for the purpose of this paragraph, “Plaintiff”) is a citizen of Delaware domiciled in Dagsboro, Delaware. On or about August 29, 2015, Plaintiff purchased a new 2014 Sprinter BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from I.G. Burton in Milford, Delaware. Plaintiff purchased, and still owns, this

vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Sprinter without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the Sprinter actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a

reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

8. Florida Plaintiff

31. Plaintiff DEDRICK WATKINS (for the purpose of this paragraph, “Plaintiff”) is a citizen of Florida domiciled in Fort Lauderdale, Florida. On or about June 2013 Plaintiff purchased a used Mercedes ML350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes Benz of Pompano Beach in Pompano Beach, Florida. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system.

None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

9. Georgia Plaintiffs

32. Plaintiff A. ERIC NGWASHI (for the purpose of this paragraph, “Plaintiff”) is a citizen of Georgia domiciled in Loganville, Georgia. On or about October 7, 2015, Plaintiff purchased a used 2012 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Atlanta Luxury Motors in Duluth, Georgia. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NO_x at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its

operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

33. Plaintiff BOBBY HAMILTON (for the purpose of this paragraph, "Plaintiff") is a citizen of Alabama domiciled in Phenix City, Alabama. On or about December 24, 2013, Plaintiff purchased a used 2012 Mercedes E Class BlueTEC (for the purpose of this paragraph, the "Affected Vehicle"), from Mercedes Benz of Columbus in Columbus, Georgia. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a "Clean Diesel", and at many multiples of that allowed by federal law. Mercedes' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the E Class without proper emission controls has caused Plaintiff

out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the E Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

10. Idaho Plaintiff

34. Plaintiff SCOTT MORGAN (for the purpose of this paragraph, “Plaintiff”) is a citizen of Idaho domiciled in McCall, Idaho. On or about April 20, 2015, Plaintiff purchased a New 2015 Sprinter BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Lyle Pearson Auto in Boise, Idaho. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and

emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Sprinter without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the Sprinter actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

11. Illinois Plaintiff

35. Plaintiff MARYANA MELNYK (for the purpose of this paragraph, “Plaintiff”) is a citizen of Illinois domiciled in Elmwood Park, Illinois. On or about October 18, 2014, Plaintiff purchased a used 2012 Mercedes S350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes-Benz of Chicago in Chicago, Illinois. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NO_x at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the S350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that

Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the S350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

12. Kentucky Plaintiff

36. Plaintiff DEVIN DOWNS (for the purpose of this paragraph, “Plaintiff”) is a citizen of Kentucky domiciled in Louisville, Kentucky. On or about December 30, 2015, Plaintiff purchased a used 2007 E320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Tafel Motors in Louisville, Kentucky. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the E320 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as

represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the E320 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

13. Maryland Plaintiffs

37. Plaintiff GUSTAVO FRAGA-ERRECART (for the purpose of this paragraph, “Plaintiff”) is a citizen of Maryland domiciled in Potomac, Maryland. On or about October 2, 2013, Plaintiff purchased a new 2013 Mercedes ML 350 BlueTEC, and on or about November 1, 2012, Plaintiff purchased a new 2012 Mercedes S350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicles”), from EuroMotorcars in Gaithersburg, Maryland. Plaintiff purchased, and still owns, the vehicles. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 and the S350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his

vehicles. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicles on the reasonable, but mistaken, belief that his vehicles were “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of their operating characteristics throughout their useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicles, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicles had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 and the S350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicles, or would have paid less for them.

38. Plaintiff HASSAN ZAVAREEI (for the purpose of this paragraph, “Plaintiff”) is a citizen of Maryland domiciled in Bethesda, Maryland. On or about February 18, 2013, Plaintiff purchased a used 2011 Mercedes E350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from EuroMotorcars in Gaithersburg, Maryland. Plaintiff purchased, and still owns, the vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system

during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the E350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel” as compared to gasoline vehicles, complied with United States emissions standards, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the E350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle.

14. Massachusetts Plaintiffs

39. Plaintiff TERRENCE GARMEY (for the purpose of this paragraph, “Plaintiff”) is a citizen of Maine domiciled in Cape Elizabeth, Maine. On or about January 15, 2015, Plaintiff purchased a used 2012 Mercedes S350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Herb Chambers Honda in Seekonk, Massachusetts. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the S350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving

conditions. Had Mercedes disclosed this design, and the fact that the S350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

40. Plaintiff CHRISTOPHER GATES (for the purpose of this paragraph, “Plaintiff”) is a citizen of Massachusetts domiciled in Wareham, Massachusetts. On or about July 2015, Plaintiff purchased a used 2010 Mercedes GL 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Boston Foreign Motor in Allston, Massachusetts. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GL 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the

environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GL 350 actually emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

15. Michigan Plaintiff

41. Plaintiff BRENDA O'NEAL (for the purpose of this paragraph, "Plaintiff") is a citizen of Michigan domiciled in Detroit, MI. On or about March 14, 2014, Plaintiff purchased a used 2009 S Class BlueTEC (for the purpose of this paragraph, the "Affected Vehicle"), from Landrover Lakeside in Sterling Heights, MI. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the S Class without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle was a "clean diesel," as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the

BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the S Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

16. Minnesota Plaintiff

42. Plaintiff CHARLES WOLFORD (for the purpose of this paragraph, “Plaintiff”) is a citizen of California domiciled in Three Rivers, California. In June 2013, Plaintiff purchased a new 2013 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Sears Imported Autos in Minneapolis, Minnesota. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared

to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

17. Missouri Plaintiffs

43. Plaintiff CRAIG THORSON (for the purpose of this paragraph, “Plaintiff”) is a citizen of Missouri domiciled in Columbia, Missouri. On or about June 15, 2013, Plaintiff purchased a New 2013 Mercedes GLK 250 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Joe Machens dealership in Columbia, Missouri. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GLK 250 without proper emission controls has caused

Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GLK 250 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

44. Plaintiff DONG H. YUN (for the purpose of this paragraph, “Plaintiff”) is a citizen of Charlotte domiciled in Charlotte, North Carolina. On or about August 1, 2015, Plaintiff purchased a used 2010 R 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Kansas City Mercedes in Kansas City, Missouri. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped

with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the R 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel," as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the R 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

18. Montana Plaintiff

45. Plaintiff HENRY SILVERIO (for the purpose of this paragraph, "Plaintiff") is a citizen of Montana domiciled in Darby, Montana. On or about January 25, 2016, Plaintiff

purchased a new 2016 Mercedes Sprinter BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Creston RV in Kalispell, Montana. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Sprinter without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the Sprinter actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high

levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

19. Nevada Plaintiffs

46. Plaintiff SHELIA REED (for the purpose of this paragraph, “Plaintiff”) is a citizen of Nevada domiciled in Las Vegas, Nevada. On or about November 11, 2013, Plaintiff purchased a used 2011 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Carmax in Las Vegas, Nevada. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to

gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

47. Plaintiff RICHARD YANUS (for the purpose of this paragraph, “Plaintiff”) is a citizen of New Hampshire domiciled in Rye, New Hampshire. On or about May 22, 2012, Plaintiff purchased a new 2011 Sprinter BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes Benz of Henderson in Henderson, Nevada. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Sprinter without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and

representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the Sprinter actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

20. New York Plaintiffs

48. Plaintiff THOMAS WEISS (for the purpose of this paragraph, “Plaintiff”) is a citizen of New York domiciled in Rome, New York. On or about November 30, 2015, Plaintiff purchased a new 2015 Mercedes Sprinter BlueTEC (Itasca Navion 24G) (for the purpose of this paragraph, the “Affected Vehicle”), from Camping World of Syracuse in Syracuse, New York. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Sprinter without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a

“clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the Sprinter actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

49. Plaintiff JOHN LAURINO (for the purpose of this paragraph, “Plaintiff”) is a citizen of Massachusetts domiciled in Orleans, Massachusetts. On or about December 26, 2012, Plaintiff purchased a new 2013 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Estate Motors in Goldens Bridge, New York. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 without proper emission controls has caused Plaintiff out-of-

pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

21. North Carolina Plaintiffs

50. Plaintiff VINCENT MINERVA (for the purpose of this paragraph, “Plaintiff”) is a citizen of North Carolina domiciled in Denver, North Carolina. On or about November 2013, Plaintiff purchased a new Sprinter BlueTEC from Hendrick Mercedes in Charlotte, North Carolina. On or about February 2014, Plaintiff purchased a used E350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicles”), from Hendrick Motors in Charlotte, North Carolina.

Plaintiff purchased, and still owns, these vehicles. Unknown to Plaintiff, at the time the vehicles were purchased, they were equipped with an emissions system that turned off or limited their emissions reduction systems during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the E350 and Sprinter without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicles. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicles on the reasonable, but mistaken, belief that his vehicles were “clean diesels,” complied with United States emissions standards, were properly EPA certified, and would retain all of their operating characteristics throughout their useful life. Plaintiff selected and ultimately purchased his vehicles, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicles had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the E350 and Sprinter actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully

high levels of pollutants, Plaintiff would not have purchased the vehicles, or would have paid less for them.

51. Plaintiff FREDDIE T. HOLBROOK (for the purpose of this paragraph, “Plaintiff”) is a citizen of North Carolina domiciled in Morganton, North Carolina. On or about January 20, 2014, Plaintiff purchased a new 2013 Mercedes Sprinter 2500 BlueTEC from Leigh Mercedes in Raleigh, North Carolina. On or about July 2014, Plaintiff purchased another new 2013 Mercedes Sprinter BlueTEC (for the purpose of this paragraph, the “Affected Vehicles”), from the same dealership. Plaintiff purchased, and still owns, these vehicles. Unknown to Plaintiff, at the time the vehicles were purchased, they were equipped with an emissions system that turned off or limited their emissions reduction systems during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a “Clean Diesel”, and at many multiples of that allowed by federal law. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Sprinters without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicles. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicles on the reasonable, but mistaken, belief that his vehicles were “clean diesels,” complied with United States emissions standards, were properly EPA certified, and would retain all of their operating characteristics throughout their useful life. Plaintiff selected and ultimately purchased his vehicles, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations

touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicles had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the Sprinters actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicles, or would have paid less for them.

22. Ohio Plaintiff

52. Plaintiff ANDREW DEUTCSH (for the purpose of this paragraph, “Plaintiff”) is a citizen of Ohio domiciled in Moreland Hills, Ohio. On or about January 14, 2016, Plaintiff leased a new 2015 Mercedes GLK Class BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from a dealership in Cleveland, Ohio. Plaintiff is currently leasing this vehicle. Unknown to Plaintiff, at the time he entered into the lease for this vehicle, it was equipped with an emissions system that turned off or limited NOx reduction during normal driving conditions and emitted many multiples of the allowed level of pollutants such as NOx. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GLK Class without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA

certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GLK Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have leased the vehicle, or would have paid less for it.

23. Pennsylvania Plaintiff

53. Plaintiff WENDELL A. DINGLE (for the purpose of this paragraph, “Plaintiff”) is a citizen of Pennsylvania domiciled in Philadelphia, Pennsylvania. On or about December 2015, Plaintiff purchased a used 2011 Mercedes GL 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes-Benz of Fort Washington in Fort Washington, Pennsylvania. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GL 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted

repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GL 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

24. Tennessee Plaintiff

54. Plaintiff ARTHUR DASCHKE (for the purpose of this paragraph, “Plaintiff”) is a citizen of Michigan domiciled in Rochester Hills, Michigan. On or about November 14, 2011, Plaintiff purchased a used 2010 Mercedes R350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes-Benz of Knoxville in Knoxville, Tennessee. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions

reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the R350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel," as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the R350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

25. Texas Plaintiffs

55. Plaintiff DR. CHANDRAKANT PATEL (for the purpose of this paragraph, "Plaintiff") is a citizen of Texas domiciled in Beaumont, Texas. On or about January 30, 2016,

Plaintiff purchased a used 2015 Mercedes GL Class BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes Benz of Clear Lake Texas in Houston, Texas. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GL Class without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GL Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a

reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

56. Plaintiff SHELBY A. JORDAN (for the purpose of this paragraph, “Plaintiff”) is a citizen of Texas domiciled in Corpus Christi, Texas. On or about July 2009, Plaintiff purchased a new 2009 Mercedes GL 320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Ed Hicks Imports in Corpus Christi, Texas. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GL 320 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to

gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GL 320 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

26. Utah Plaintiffs

57. Plaintiff SEID DILGISIC (for the purpose of this paragraph, “Plaintiff”) is a citizen of Utah domiciled in Salt Lake City, Utah. On or about February 1, 2013, Plaintiff purchased a new 2013 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes Benz of Salt Lake City in Salt Lake City, Utah. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented

through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

58. Plaintiff TIFFANY KNIGHT (for the purpose of this paragraph, “Plaintiff”) is a citizen of Utah domiciled in Salt Lake City, Utah. Plaintiff purchased a used 2012 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes-Benz of Lindon in Provo, Utah. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle was a “clean diesel,” as compared to gasoline

vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

27. Virginia Plaintiffs

59. Plaintiff ULYANA LYNEVYCH (for the purpose of this paragraph, “Plaintiff”) is a citizen of Illinois domiciled in Schiller Park, Illinois. In August 2014, Plaintiff purchased a used 2014 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Tysinger Motor Co., Inc. of Hampton, Virginia. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML 350 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of her vehicle. Mercedes knew about,

manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased her vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML 350 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

60. Plaintiff DARRELL FELLER (for the purpose of this paragraph, “Plaintiff”) is a citizen of Washington domiciled in Bellingham, Washington. On or about August 8, 2013, Plaintiff purchased a new 2013 Mercedes GLK Class BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes Benz of Tyson Corner in Vienna, Virginia. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions

reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GLK Class without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel," as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the GLK Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

28. Washington Plaintiffs

61. Plaintiff MICHAEL MEDLER (for the purpose of this paragraph, "Plaintiff") is a citizen of Washington domiciled in Bellingham, Washington. On or about December 24, 2015,

Plaintiff purchased a used 2015 Mercedes Sprinter BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Wilson Motors in Bellingham, Washington. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Sprinter without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the Sprinter actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high

levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

62. Plaintiff RANDOLPH ROLLE (for the purpose of this paragraph, “Plaintiff”) is a citizen of Washington domiciled in Seabeck, Washington. On or about August 1, 2015, Plaintiff purchased a new 2015 Mercedes ML Class BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Larson Mercedes Benz in Tacoma, Washington. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the ML Class without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to

gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the ML Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

29. West Virginia Plaintiff

63. Plaintiff JAMES EDWARDS (for the purpose of this paragraph, “Plaintiff”) is a citizen of West Virginia domiciled in Charleston, West Virginia. On or about May 2015, Plaintiff purchased a used 2014 Mercedes E250 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”) in a private sale in Charleston, West Virginia. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the E250 without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” as compared to gasoline vehicles, complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made

by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the E250 actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

30. Wisconsin Plaintiff

64. Plaintiff LARS DANNBERG (for the purpose of this paragraph, "Plaintiff") is a citizen of Florida domiciled in West Palm Beach, Florida. On or about November 22, 2013, Plaintiff purchased a new 2014 Mercedes E Class BlueTEC (for the purpose of this paragraph, the "Affected Vehicle"), from Bergstrom Enterprise Motorcars in Appleton, Wisconsin. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted many multiples of the allowed level of pollutants. Mercedes' unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the E Class without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Mercedes knew about, manipulated, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel," as compared to gasoline vehicles, complied with United States emissions

standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life, including high fuel economy. Plaintiff selected and ultimately purchased his vehicle, in part, because of the BlueTEC Clean Diesel system, as represented through advertisements and representations made by Mercedes. Plaintiff recalls that the advertisements and representations touted the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure that the Affected Vehicle had high emissions compared to gasoline vehicles and the fact that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions. Had Mercedes disclosed this design, and the fact that the E Class actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect, and emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

B. Defendant

1. Mercedes-Benz USA, LLC

65. 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’

registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

66. Mercedes, through its various entities, designs, manufactures, markets, distributes and sell Mercedes automobiles in New Jersey 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.

2. Daimler AG

67. Defendant Daimler Aktiengesellschaft ("Daimler AG") is a foreign corporation headquartered in Stuttgart, Baden-Württemberg, Germany.

68. Daimler AG is engaged in the business of designing, engineering, manufacturing, testing, marketing, supplying, selling and distributing motor vehicles, including the Affected Vehicles, in the United States.

69. Daimler AG engineered, designed, developed, manufactured and installed the emissions systems on the Affected Vehicles, manipulated the emission systems in such a manner so as to reduce the systems' effectiveness during on-road driving conditions, and exported these vehicles with the knowledge and understanding that they would be sold throughout the United States

70. Daimler AG is and was at all relevant times doing business in a continuous manner through a chain of distribution and dealers throughout the United States, including within the District of New Jersey in the State of New Jersey by selling, advertising, promoting and distributing Mercedes-Benz motor vehicles.

71. Through its wholly-owned subsidiaries and/or agents, Daimler AG markets its products in a continuous manner in the United States, including the State of New Jersey.

72. Daimler AG is the parent of, controls and communicates with Mercedes-Benz USA, LLC concerning virtually all aspects of the Affected Vehicles distributed in the United States.

73. Mercedes-Benz USA, LLC acts as the sole distributor for Mercedes-Benz vehicles in the United States, purchasing those vehicles from Daimler in Germany for sale in this country.

74. Daimler AG also developed, reviewed, and approved the marketing and advertising campaigns designed to sell the Affected Vehicles.

75. On information and belief, the relationship between Daimler AG and Mercedes-Benz USA LLC is governed by a General Distributor Agreement that gives Daimler AG the right to control nearly every aspect of Mercedes-Benz USA, LLC's operations—including sales, marketing, management policies, information governance policies, pricing, and warranty terms.

76. Daimler AG owns 100% of the capital share in Mercedes-Benz USA, LLC.¹

77. Daimler AG paid 19 million euros (approximately 21.8 million U.S. dollars) in relocation expenses for Mercedes-Benz USA, LLC's headquarters.

78. Communications to investors about emissions investigations in the United States—the very object of this Complaint—and the class actions that it faces in the United States come directly from Daimler AG, not from Mercedes-Benz USA, LLC. In one communication,

¹ Daimler AG 2015 Annual Report, Notes to the Consolidated Financial Statement, p. 274.

Daimler AG says that it will defend itself against US class action emissions lawsuits “with all available legal means.”²

79. Service of process on this defendant is proper by serving it via its wholly owned subsidiary and alter ego, Mercedes-Benz USA, LLC, in Montvale, New Jersey.

V. FACTUAL ALLEGATIONS

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

80. 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.

81. 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.

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

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

² Press Release, Daimler Conducts Internal Investigation Regarding its Certification Process Related to Exhaust Emissions in the United States (April 22, 2016), *available at* <https://www.daimler.com/documents/investors/nachrichten/kapitalmarktmeldungen/daimler-ir-release-en-20160422-2.pdf>.

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

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

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

87. NO_x is a generic term for the mono-nitrogen oxides NO and NO₂ (nitric oxide and nitrogen dioxide), which are predominantly produced from the reaction of nitrogen and oxygen gases in the air during combustion. NO_x is produced by the burning of all fossil fuels, but is particularly difficult to control from the burning of diesel fuel. NO_x is a toxic pollutant, which produces smog and a litany of environmental and health problems. NO_x pollution contributes to nitrogen dioxide, particulate matter in the air, and reacts with sunlight in the atmosphere to form ozone. Exposure to these pollutants has been linked with serious health dangers, including asthma attacks and other respiratory illness serious enough to send people to the hospital. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory illness are at acute risk of health effects from these pollutants. NO_x

can cause breathing problems, headaches, chronically reduced lung function, eye irritation, and corroded teeth. It can indirectly affect humans by damaging the ecosystems they rely on.

88. Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains longer hydrocarbon chains, which tend to produce a more efficient vehicle. In fact, diesel engines can convert over 45% of diesel's chemical energy into useful mechanical energy, whereas gasoline engines convert only 30% of gasoline's chemical energy into mechanical energy.³ Though more efficient, diesel engines come with their own set of challenges, as emissions from diesel engines can include higher levels of NOx and particulate matter (PM) or soot than emissions from gasoline engines due to the different ways the different fuels combust and the different ways the resulting emissions are treated following combustion. One way NOx emissions can be reduced is by adjusting the compression and temperature, but that in turn produces particulate matter (PM), a similarly-undesirable hydrocarbon-based emission. Another way NOx emissions can be reduced is through exhaust gas recirculation or "EGR", whereby exhaust gases are routed back into the intake of the engine and mixed with fresh incoming air. Exhaust gas recirculation lowers NOx by reducing the available oxygen and by reducing maximum combustion temperatures; however, EGR can also lead to an increase in PM as well. Another way NOx emissions can be reduced is through expensive exhaust gas after-treatment devices, primarily, catalytic converters, that use a series of chemical reactions to transform the chemical composition of a vehicle's NOx emissions into less harmful, relatively inert, and triple bonded nitrogen gas (N₂) and carbon dioxide (CO₂).

89. Diesel engines thus operate according to this trade-off between price, NOx, and PM, and for the EPA to designate a diesel car as a "clean" vehicle, it must produce both low PM

³ Jack Ewing, Volkswagen Engine-Rigging Scheme Said to Have Begun in 2008, N.Y. Times (Oct. 5, 2015), <http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-volkswagen-to-evade-emissions-testing.html>.

and low NO_x. In 2000, the EPA announced stricter emission standards requiring all diesel models starting in 2007 to produce drastically less NO_x than years prior. But it was of utmost importance for Mercedes to achieve (or at least appear to achieve) this “impossible” goal, for it could not legally sell a single vehicle that failed to comply with the governmental emission regulations. Before introducing an Affected Vehicle into the U.S. stream of commerce (or causing the same), Mercedes was required to first apply for, and obtain, an EPA-administered COC, certifying that the vehicle comported with the emission standards for pollutants enumerated in 40 C.F.R. §§ 86.1811-04, 86.1811-09, and 86.1811-10. The CAA expressly prohibits automakers, like Mercedes, from introducing a new vehicle into the stream of commerce without a valid EPA COC. *See* 42 U.S.C. § 7522(a)(1). Moreover, vehicles must be accurately described in the COC application “in all material respects” to be deemed covered by a valid COC. *See* 40 C.F.R. §§ 86.1848-10(c)(6). California’s emission standards are even more stringent than those of the EPA. California’s regulator, CARB, requires a similar application from automakers to obtain an EO, confirming compliance with California’s emission regulations, before allowing the vehicle onto California’s roads.

B. The BlueTEC Technology

90. Car manufacturers have struggled to produce diesel engines that have high power and strong fuel efficiency but also cleaner emissions. Removing NO_x from the untreated exhaust is difficult, and diesel car makers have reacted by trying to remove NO_x from the car’s exhaust using catalysts.

91. Mercedes’ response to the challenge has been the BlueTEC diesel engine.

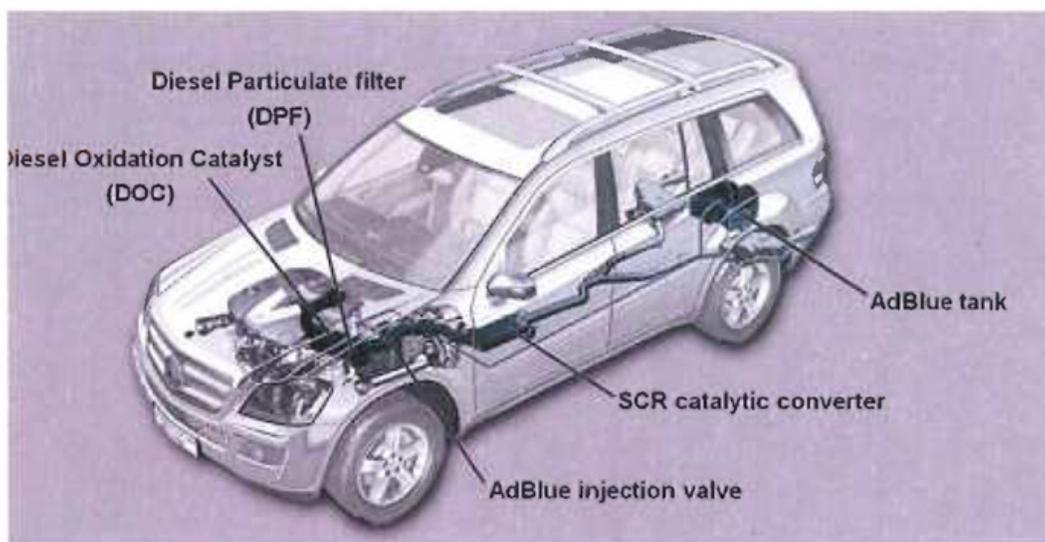
92. In order to successfully grow the U.S. diesel market and meet its ambitious objectives, it was critical that Mercedes develop the technology to maintain the efficient,

powerful performance of a diesel, while drastically reducing NOx emissions to comply with the CAA and state emission standards.

93. This high-stakes engineering dilemma led to a deep divide within the company, as two divergent exhaust gas after-treatment technical approaches emerged. One approach involved a selective catalytic reduction (SCR) system that proved to be effective but expensive. The other, which utilized a lean NOx trap, was significantly cheaper but was less effective and resulted in lower fuel efficiency.

94. A SCR System is depicted below:

SCR



95. In 2006, Wolfgang Bernhard, then a top executive at VW AG (and former Daimler executive), advocated for the SCR system and championed a technology-sharing agreement with Mercedes-Benz and BMW to jointly develop a SCR emission control system utilizing urea—a post-combustion emission reductant generically referred to as “Diesel Exhaust Fluid” or “DEF” and marketed as “AdBlue” by Mercedes, Volkswagen, and other German

vehicle manufacturers that, when injected into the exhaust stream in a catalyst chamber, converts NOx into nitrogen gas, water, and carbon dioxide. This SCR system was expensive, costing \$350 per vehicle, and came with other compromises, including, primarily, the need for installation of a DEF tank that would require regular refills.

96. After the by-products of combustion leave the engine, some of the exhaust is cooled and returned to the combustion chamber using exhaust gas recirculation (EGR). This is the first step in reducing engine-out NOx. After passing through a particulate filter, the BlueTEC technology injects ammonia-rich urea into the exhaust in order to convert NOx into less harmful substances, such as nitrogen and oxygen.

97. The BlueTEC approach, when it is operating, results in cleaner emissions.

C. Mercedes Advertised and Promoted BlueTEC as the World’s Cleanest Diesel Engine.

98. Mercedes customers expect “exceptional environmental sustainability.”⁴ In a 2008 press release, Mercedes acknowledged that “the environmental sustainability of vehicles is gaining importance in the purchasing decision.”⁵

99. To induce consumers to purchase BlueTEC vehicles, Mercedes marketed the BlueTEC-equipped vehicles as environmentally friendly and fuel efficient “without the need to forego the characteristic brand features—safety, comfort and refined driving pleasure.”⁶

⁴ Press Release, Mercedes-Benz, Mercedes-Benz launches “Formula Green” in the five, four and three-litre consumption class, *available at* <http://media.daimler.com/dcmmedia/0-921-658901-1-1277592-1-0-0-0-1-0-0-0-1-0-0-0-0-0-0-0.html>.

⁵ Press Release, Mercedes-Benz, Road to the Future: From BlueTEC Diesel Vehicles to Electric Vehicles: Modular Technologies for a Clean Future of the Premium Automobile, *available at*, <http://media.daimler.com/dcmmedia/0-921-657591-1-1091617-1-0-1-0-0-1-12639-0-0-1-0-0-0-0-0.html?TS=1459448202325>.

⁶ Press Release, Mercedes-Benz, Road to the Future: From BlueTEC Diesel Vehicles to Electric Vehicles: Modular Technologies for a Clean Future of the Premium Automobile, *available at*, <http://media.daimler.com/dcmmedia/0-921-657591-1-1091617-1-0-1-0-0-1-12639-0-0-1-0-0-0-0-0.html?TS=1459448202325>.

100. Mercedes advertising is widely disseminated throughout the United States. It includes, among other things, televised advertisements, online social media campaigns, press releases and public statements (claiming BlueTEC vehicles comply with EPA emissions standards), print advertising, brochures and other materials distributed to dealers and distributors, and strategic product placement (for instance, a Mercedes fleet of “low-emission” vehicles, including the E320 BlueTEC, shuttled superstar musicians at each of the eight 2007 Live Earth climate protection concerts, two of which took place in the United States⁷).

1. Mercedes advertised and promoted BlueTEC as low-emitting.

101. Mercedes’ advertisements, promotional campaigns, and public statements represented that the Affected Vehicles had high fuel economy, low emissions, reduced NOx by 90%, had lower emissions than comparable diesel vehicles, and had lower emissions than other comparable vehicles. For example:

- a. According to Mercedes, it offers consumers “the world’s cleanest diesel automobiles.”⁸
- b. Mercedes promises that BlueTEC Clean Diesel vehicles have “ultra-low emissions,”⁹ with “up to 30% lower greenhouse-gas emissions than gasoline.”
- c. On its website, Mercedes depicts a BlueTEC SUV driving next to a shoreline with ebullient waves under a clear-blue sky. In a faded-blue portion in the vehicles’ path, Mercedes asks consumers to “imagine a fuel that produces fewer greenhouse gases than gasoline.”¹⁰

⁷ Press Release, Mercedes-Benz, Phil Collins, Jon Bon Jovi, Snoop Dogg and the Black Eyed Peas Join Smart to Protect the Environment, *available at* <http://media.daimler.com/dcmmedia/0-921-1653632-1-893475-1-0-0-0-0-1-0-0-0-1-0-0-0-0-0-0.html>.

⁸ Press Release, Mercedes-Benz, Phil Collins, Jon Bon Jovi, Snoop Dogg and the Black Eyed Peas Join Smart to Protect the Environment, *available at* <http://media.daimler.com/dcmmedia/0-921-1653632-1-893475-1-0-0-0-0-1-0-0-0-1-0-0-0-0-0-0.html>.

⁹ *E.g.*, 2011 GL Class Brochure, p. 5 (“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.”).

¹⁰ *BlueTEC Clean Diesel*, <https://www.mbusa.com/mercedes/benz/green/diesel/bluetec> (last visited March 29, 2016).

- d. Mercedes claims that BlueTEC produces up to 90% fewer emissions than equivalent gas-powered vehicles,¹¹ and converts nitrous oxide emissions into “pure, earth-friendly nitrogen and water.”¹²
- e. In a technical explanation of BlueTEC on its website, Mercedes tells consumers that it “reduces Nitrogen Oxides by up to 80%”¹³
- f. Mercedes proclaims itself “#1 in CO2 emissions for luxury vehicles.”¹⁴
- g. Mercedes’ web site proclaimed:

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.

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.

- h. One Mercedes BlueTEC advertisement depicts two rear mufflers side-by-side in the shape of human lungs. The caption underneath claims that BlueTEC is “For the air we breathe.”

¹¹ E.g., 2016 Sprinter Van Brochure, p. 2.

¹² E.g., 2011 M-Class Brochure, p. 5.

¹³ How Mercedes-Benz BlueTEC Works—Clean Diesel Technology, Mercedes-Benz Official YouTube Channel, https://youtu.be/w4T5B_UmgJo.

¹⁴ *BlueTEC Clean Diesel*, https://www.mbusa.com/mercedes/benz/green/diesel_bluetec (last visited March 29, 2016).



2. Mercedes advertised and promoted BlueTEC as environmentally friendly.

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

103. BlueTEC is part of a line-up of Mercedes technologies that it says are “green.”¹⁷ Mercedes widely disseminates advertisements, promotional campaigns, and public statements

¹⁵ Advertisement created by Jung von Matt, Swiss creative agency, available at <http://www.jvm.ch/en/arbeiten/kampagne/mercedes-benz/bluetec-1/print>.

¹⁶ *Mercedes-Benz & The Environment*, <https://www.mbusa.com/mercedes/benz/green#main> (last visited March 31, 2016).

¹⁷ *Mercedes-Benz & The Environment*, <https://www.mbusa.com/mercedes/benz/green#main> (last visited March 31, 2016).

throughout the United States to induce the purchase of BlueTEC vehicles by customers that are concerned about the environment. For example:

- a. Mercedes calls its BlueTEC engine, “[e]arth-friendly, around the world.”¹⁸
- b. A promotional video created for Mercedes in 2009 opens with the camera pointing up to the sky with rays of sun coming through clouds. “The Earth,” says the narrator “is changing.” He then tells us that Mercedes-Benz BlueTEC is “cleaner . . . and—with a revolutionary system which significantly reduces greenhouse gases and smog-forming pollutants—more respectful of the earth.”¹⁹
- c. A technical description of BlueTEC available on the Mercedes-Benz website closes with, “BlueTEC—the world’s cleanest diesel engines. Environmentally-friendly technology, without sacrificing performance or driving pleasure.”²⁰
- d. Mercedes claims in a brochure for the 2016 Sprinter that “Thanks to BlueTEC clean-diesel technology, the Sprinter is one of the greenest vans in the land.”²¹
- e. Mercedes strategically placed its BlueTEC vehicles among a fleet of Mercedes-Benz vehicles that shuttled superstar musicians like Bon Jovi, Snoop Dogg, The Police, Kanye West and others at the 2007 Live Earth climate protection concerts. Live Earth attendees were asked to pledge that they would take personal action to solve the climate crises and “buy from businesses . . . who share my commitment to solving the climate crises.”²²
- f. A 2009 website designed for Mercedes-Benz pictured a 2009 ML320 BlueTEC driving in the sky through clouds, with the title, “Why you should go BLUE if you want to go green.”²³ The site promised consumers, “an environmentally-smart solution that doesn’t demand sacrifices.” On information and belief, this design was disseminated to U.S. consumers by Mercedes-Benz U.S. via its website on or around 2009.

¹⁸ *BlueTEC Clean Diesel*, https://www.mbusa.com/mercedes/benz/green/diesel_bluetec (last visited March 29, 2016).

¹⁹ Studio Dialog, Video for Mercedes-Benz BlueTEC, *available at* <https://vimeo.com/8989688>.

²⁰ How Mercedes-Benz BlueTEC Works—Clean Diesel Technology, Mercedes-Benz Official YouTube Channel, https://youtu.be/w4T5B_UmgJo.

²¹ 2016 Sprinter Van Brochure, p. 2.

²² *Gore Urges “7 Point Pledge” Ahead of Live Earth*, Associated Press, June 29, 2007, *available at* http://www.nbcnews.com/id/19502465/ns/us_news-environment/t/gore-urges-point-pledge-ahead-live-earth/#.

²³ Portfolio of Chris Lacey, Mercedes-Benz BlueTEC, <http://www.chrislacey.net/354/uncategorized/mercedes-benz-bluetec>.

3. Mercedes advertised and promoted BlueTEC as meeting and exceeding compliance with U.S. emissions standards in all 50 states.

104. Mercedes expressly markets the Affected Vehicles as Clean Diesel vehicles, with registration approvals in all 50 states. For example:

- a. Mercedes' website proudly presents "BlueTEC: . . . now available in five different Mercedes-Benz BlueTEC models in all 50 states."²⁴
- b. A June 2008 press release boasts that Mercedes-Benz was the first manufacturer in the world to achieve registration approval in all 50 states for Diesel SUVs.²⁵
- c. In an April 2009 interview about the Mercedes-Benz E-Class, Professor Dr. Herbert Kohler, Chief Environmental Officer at Daimler AG, claims that Mercedes-Benz "goes beyond statutory requirements," because "sustainable mobility means more than the mere fulfilment of rigid environmental guidelines."²⁶

D. The Mercedes Deception

105. 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 (called "defeat devices"),²⁷ scientific literature and reports and testing indicate that Mercedes' so called Clean Diesel vehicles emit far more pollution on the road than in lab tests. The EPA has widened its probe of auto emissions to include, for example, the Mercedes E250 BlueTEC.

²⁴ *Mercedes-Benz & The Environment*, <http://www.mbusa.com/mercedes/benz/green#module-2> (last visited March 31, 2016).

²⁵ Press Release, Mercedes-Benz, Road to the Future: From BlueTEC Diesel Vehicles to Electric Vehicles: Modular Technologies for a Clean Future of the Premium Automobile, *available at*, <http://media.daimler.com/dcmedia/0-921-657591-1-1091617-1-0-1-0-0-1-12639-0-0-1-0-0-0-0.html?TS=1459448202325>.

²⁶ Life Cycle, Environmental Certificate for the E-Class, p. 6 (April 2009).

²⁷ The EPA's Notice of Violation ("NOV") to Volkswagen Group of America, Inc. can be found at: <http://www3.epa.gov/otaq/cert/documents/vw-nov-caa-09-18-15.pdf>. As detailed in the EPA's Notice of Violation ("NOV"), software in Volkswagen and Audi diesel vehicles detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the 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.

106. As first reported in a February 2016 issue of German language magazine *Der Spiegel*, Mercedes has **admitted** that a shut-off device in the engine management of its C-Class diesel cars stops NOx cleaning when ambient temperatures drop below 50 degrees Fahrenheit and in other, unspecified circumstances. Mercedes asserts, without providing details, that the shut-off is done to protect the engine.

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

108. This alone puts the lie to Mercedes' claims that BlueTEC is "the world's cleanest diesel passenger vehicle" with "ultralow emissions:" Mercedes misrepresents the emissions performance of its vehicles equipped with BlueTEC engines because, when the temperature falls below 50 degrees, the Affected Vehicles spew unmitigated NOx into the air.

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

110. Although Mercedes has admitted to a German magazine that no American consumer would see that its BlueTEC vehicles spew high NOx emissions when it is cold—much higher than NOx emissions in gasoline engines—the scope of the deception is much broader and damaging: Mercedes BlueTEC vehicles produce much higher NOx emissions than gasoline vehicles *under a wide variety of normal driving conditions even when the ambient temperature exceeds 50 degrees F.*

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

112. TNO added: “In chassis dynamometer tests the engine out NOx emissions are 100 to 450 mg/km, indicating an effective EGR [exhaust gas recirculation] system which reduces NOx emissions in certain chassis dynamometer tests. In real-world tests the EGR system seems to be less effective or not effective at all, as engine out NOx emissions in real-world tests range from 450 to as much as 2250 mg/km.” TNO Report at 34. The fact that Mercedes passed the dynamometer test in all tests, but failed the real world test, suggests that like VW, Mercedes is implementing a “defeat device.” As discussed below, plaintiffs’ dynamometer testing indicates that Mercedes employs a defeat device in its diesels.

113. TNO also found that the tank holding the AdBlue in the Mercedes C-Class 220 was too small to hold the amount of AdBlue catalyst necessary to reduce NOx emissions below

regulatory limits for the advertised service interval (22,000 km). The tank size is 25 liters, and TNO found that a 45.8 liter tank would be necessary to meet the Euro 6 80 mg/km NO_x emission level—a level that is less stringent than U.S. limits. TNO Report at 45.

114. TNO further remarked: “It is remarkable that the NO_x emission under real-world conditions exceeds the type approval value by [so much]. It demonstrates that the settings of the engine, the EGR and the SCR during a real-world test trip are such that they do not result in low NO_x emissions in practice. In other words: *In most circumstances arising in normal situations on the road, the systems scarcely succeed in any effective reduction of NO_x emissions.*” TNO Report at 6 (emphasis added). The lack of any “effective reduction of NO_x emissions” is a complete contradiction of Mercedes’ claim that its vehicles are “Earth Friendly,” produce “harmless nitrogen and oxygen,” “Reduce[] Nitrogen Oxides by 80%,” are “For the air we breathe,” or “significantly reduce[] greenhouse gases.”

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

116. Furthermore, it was reported in October 2015 that certain diesel models sold by Mercedes in Europe (including the C 220 BlueTEC and the GLA 200 d) were found to emit 2 to 3 times higher levels of NO_x pollution when tested in more realistic driving conditions,

according to new research data compiled by ADAC, Europe's largest motoring organization. The new testing results are based on a U.N.-developed test called "WLTC."

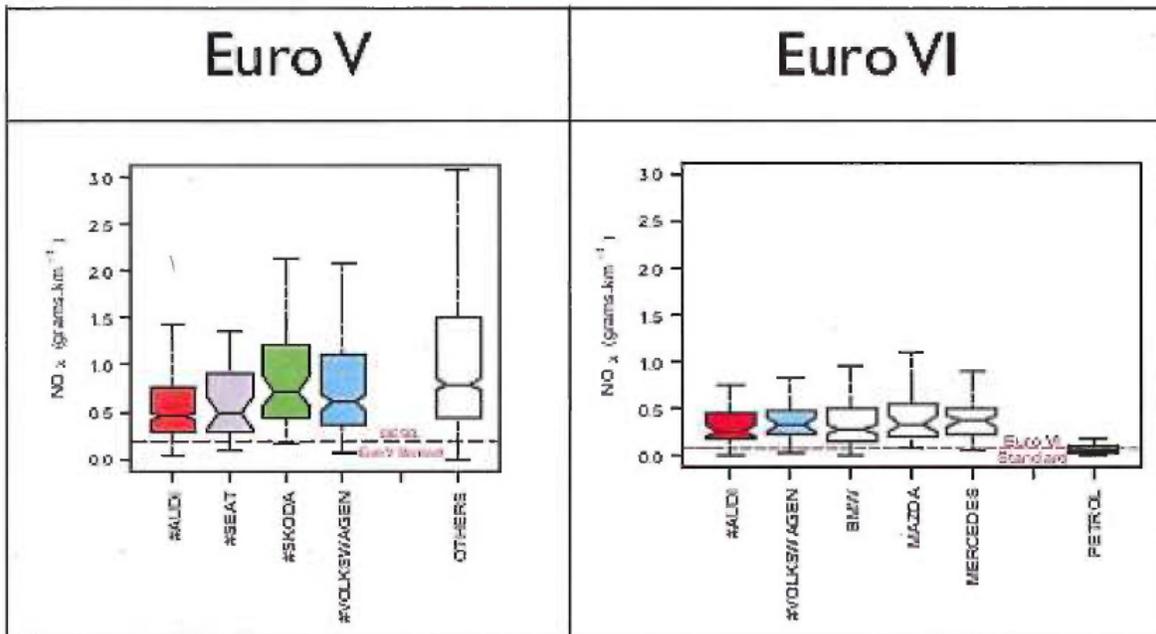
117. Worse still, according to on-road testing in Europe by Emissions Analytics, publicized on October 9, 2015, Mercedes' diesel cars produced an average of 0.406g/km of NOx on the road, 5 times higher than the Euro 6 level permits—and more than 13 times higher than the U.S. level permits (.03g/km).

118. Emissions Analytics is a U.K. company, which says that it was formed to "overcome the challenge of finding accurate fuel consumption and emissions figures for road vehicles." With regard to its recent on-road emissions testing, the company explains: "[I]n the European market, we have found that real-world emissions of the regulated nitrogen oxides are four times above the official level, determined in the laboratory. Real-world emissions of carbon dioxide are almost one-third above that suggested by official figures. For car buyers, this means that fuel economy on average is one quarter worse than advertised. This matters, even if no illegal activity is found."

119. Testing by the Institute for Transport Studies in the UK in 2015 also confirmed that Mercedes' vehicles exceeded the more lax European NOx standards:

Manufacturer comparison

Euro VI



120. 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 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.

121. 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."

122. 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.

123. Mercedes’ statements are misleading at best. Real world testing of the Mercedes’ engine reveals that it routinely emits NOx that exceed U.S. and state emission levels and these levels far exceed any notion that these vehicles are clean.

124. Plaintiffs’ testing of Mercedes BlueTEC vehicles at highway speeds, using a Portable Emissions Measurement System (PEMS), found that average highway emissions were very high and much higher than gasoline engines. Below is a photograph of a test vehicle outfitted with a PEMS:



125. Average highway emissions for one BlueTEC vehicle with a 2.1 liter engine were at 320 mg/mile or about 4.5 times the highway standard. In some instances, at 60 mph, emissions were found to be as high as 432 mg/mile or 6.1 times the highway standard.

126. Additional testing was conducted below 50 degrees F (10 deg. C). NOx emissions were found to range from 1.3 to 6.3 times higher than tests conducted at temperatures above 50 degrees F. That translates to NOx emissions 8.1 to 19.7 times the highway standard in cold weather.

127. Testing was also performed under variable speed and stop-and-go driving conditions. A total of 325 miles of data was accumulated with average speeds ranging from 14.6 to 43.9 mph. On-road conditions of this type are best represented by the FTP-75 standard of

0.050 g/mile NO_x. In no instances of the 18 tests conducted did measured emissions fall below the FTP standard. Weighting the emissions by the distance traveled for each trip, the average variable speed emissions of the vehicle were found to be 249 mg/mile, or about 5 times the FTP standard. In several instances, emissions were found to be as high as 500 to 631 mg/mile, or 10 to 12.6 times the FTP standard.

128. Additional variable-speed testing was conducted below 50 degrees F (10 deg. C). NO_x emissions were found to be as much as 7.3 times higher than tests conducted at temperatures above 50 degrees F. That translates to NO_x emissions as much as 30.8 times the standard.

129. In addition, tests were conducted for driving conditions where there is no emissions standard. In testing done on mountain conditions, NO_x emissions were 579 mg/mile, hardly “Earth Friendly.” Even in downhill driving, NO_x emissions were high.

130. Plaintiffs’ experts then conducted dynamometer tests for the vehicle in accordance with EPA and CARB procedures testing protocols.

131. For the “FTP” and “Highway” certification tests the vehicle is close to or under standards. In contrast, as stated above, the vast majority of real driving emission tests produced NO_x emissions much higher than the dynamometer. Below are the dynamometer results:

| | Test Cycle (values in mg/mile) | |
|-----------------------|--------------------------------|-----|
| | FTP | Hwy |
| EPA Cert. Standard | 50 | 70 |
| Reported Cert. Values | | |
| Dyno Test Values | 66 | 8 |

132. Set forth below are the results from real driving emissions (“RDE”):

| | FTP Style Driving (mg/mile) | | Highway Cycle Style Driving (mg/mile) | |
|-----------------------|-----------------------------|-----------------------|---------------------------------------|-----------------------|
| | Factor Above Dyno Test | Factor Above Standard | Factor Above Dyno Test | Factor above Standard |
| Average RDE | 3.3 | 4.4 | 36.1 | 4.1 |
| Maximum RDE Emissions | 7.6 | 10 | 54 | 6.2 |

133. The vast majority of the RDE collected for FTP-style driving at cold temperatures produced NO_x emissions much higher than measured on the dynamometer. On average, the NO_x of the RDE is 5.6 times higher than on the dynamometer (and 16.9 times the standard). In some cases, the RDE NO_x is 10.3 times the dynamometer value (or 30.9 times the standard).

134. All of the RDE collected for Highway-style driving produced NO_x emissions much higher than measured on the dynamometer. On average, the NO_x of the RDE is 32.3 times higher than on the dynamometer (13.9 times the standard). In some cases, the RDE NO_x is 45.9 times the dynamometer value (or 19.7 times the standard).

135. Plaintiffs' experts also conducted on-road testing of a Mercedes BlueTEC vehicle containing a larger, 3.0 liter engine. The results were similar, revealing very high on-road NO_x emissions that were much higher than gasoline engines. Stop-and-go driving tests revealed NO_x emissions that were, on average, 5 times the standard, while steady driving at various speeds resulted in NO_x emission that were, on average, 4.4 times the standard.

136. The difference in emissions on the dynamometer versus RDE suggests the Mercedes diesel vehicles has the ability to detect that it is being tested on a dynamometer, meaning a defeat device is at work.

137. Recent testing by the German Federal Department of Motor Vehicles has revealed that certain Mercedes vehicles, in addition to vehicles produced by other manufacturers, had "conspicuously high NO_x emissions that apparently could not be sufficiently explained from a

technical point of view.” The findings, announced April 22, 2016, have led to the “voluntary” recall of 630,000 vehicles in Europe, including Mercedes vehicles.

138. Mercedes diesel vehicles recently failed on-road emissions tests conducted by French authorities, leading the French government to order Mercedes to present plans to reduce the vehicles’ emissions.

139. On April 21, the United States Department of Justice asked Mercedes to investigate “irregularities” in diesel emissions in Mercedes vehicles in the United States.

140. By manufacturing and selling BlueTEC cars that emit far more pollutants than their gasoline counterparts, that emit far more pollutants than permitted under EPA standards, and that emit far more pollutants on the road than in laboratory tests, Mercedes defrauded its customers, and engaged in unfair competition under state laws.

141. On information and belief, Plaintiffs allege 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.

E. The Damage

142. NO_x contributes to ground-level ozone and fine particulate matter. According to the EPA, “Exposure to these pollutants has been linked with a range of serious health effects, including increased asthma attacks and other respiratory illnesses that can be serious enough to send people to the hospital. Exposure to ozone and particulate matter have also been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory disease are particularly at risk for health effects of these pollutants.”

143. The EPA describes the danger of NO_x as follows:

Acid Rain - NO_x and sulfur dioxide react with other substances in the air to form acids which fall to earth as rain, fog, snow, or dry particles. Some may be carried by the wind for hundreds of miles. Acid rain damages forests; causes deterioration of cars, buildings, and historical monuments; and causes lakes and streams to become acidic and unsuitable for many fish.

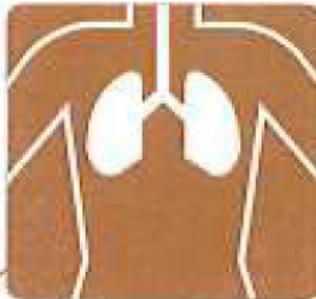
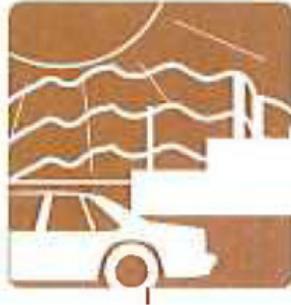


Water Quality Deterioration - Increased nitrogen loading in water bodies, particularly coastal estuaries, upsets the chemical balance of nutrients used by aquatic plants and animals. Additional nitrogen accelerates "eutrophication," which leads to oxygen depletion and reduces fish and shellfish populations. NO_x emissions in the air are one of the largest sources of nitrogen pollution to the Chesapeake Bay.



Toxic Chemicals - In the air, NO_x reacts readily with common organic chemicals, and even ozone, to form a wide variety of toxic products, some of which may cause biological mutations. Examples of these chemicals include the nitrate radical, nitroarenes, and nitrosamines.

Ground-level Ozone (Smog) - is formed when NO_x and volatile organic compounds (VOCs) react in the presence of heat and sunlight. Children, the elderly, people with lung diseases such as asthma, and people who work or exercise outside are susceptible to adverse effects such as damage to lung tissue and reduction in lung function. Ozone can be transported by wind currents and cause health impacts far from the original sources. Millions of Americans live in areas that do not meet the health standards for ozone. Other impacts from ozone include damaged vegetation and reduced crop yields.



Particles - NO_x react with ammonia, moisture, and other compounds to form nitric acid vapor and related particles. Human health concerns include effects on breathing and the respiratory system, damage to lung tissue, and premature death. Small particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease, such as emphysema and bronchitis, and aggravate existing heart disease.



Global Warming - One member of the NO_x family, nitrous oxide, is a greenhouse gas. It accumulates in the atmosphere with other greenhouse gases causing a gradual rise in the earth's temperature. This will lead to increased risks to human health, a rise in the sea level, and other adverse changes to plant and animal habitat.

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

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

VI. TOLLING OF THE STATUTE OF LIMITATIONS

A. Discovery Rule Tolling

146. Class members had no way of knowing about Mercedes' deception with respect to the comparatively and unlawfully high emissions of its BlueTEC Clean Diesel engine system in Affected Vehicles. To be sure, Mercedes continues to market the Affected Vehicles as "clean" diesels that have lower emissions than gasoline vehicles and also continues to claim that Affected Vehicles comply with EPA emissions standards.

147. Within the time period of any applicable statutes of limitation, Plaintiffs and members of the proposed classes could not have discovered through the exercise of reasonable diligence that Mercedes was concealing the conduct complained of herein and misrepresenting the Company's true position with respect to the emission qualities of the Affected Vehicles.

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

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

B. Fraudulent Concealment Tolling

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

151. Instead of disclosing its emissions scheme, or that the quality and quantity of emissions from the Affected Vehicles were far worse than represented, and of its disregard of law, Mercedes falsely represented that the Affected Vehicles had emissions cleaner than their gasoline powered counterparts, complied with federal and state emissions standards, that the diesel engines were "Clean," and that it was a reputable manufacturer whose representation could be trusted.

C. Estoppel

152. Mercedes was under a continuous duty to disclose to Plaintiffs and the other Class members the true character, quality, and nature of emissions from the Affected Vehicles, and of those vehicles' emissions systems.

153. Mercedes knowingly, affirmatively, and actively concealed or recklessly disregarded the true nature, quality, and character of the emissions systems, and the emissions, of the Affected Vehicles.

154. Based on the foregoing, Mercedes is estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ALLEGATIONS

155. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to the provisions of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class and subclasses (collectively, the "Classes"):

The Nationwide Class

All persons or entities in the United States who owned and or leased an “Affected Vehicle” as of February 18, 2016. Affected Vehicles include, without limitation, the diesel-powered: 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.

The Alabama Subclass

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

The Arizona Subclass

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

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 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 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 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 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 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 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 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 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 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 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.

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.

156. Excluded from the Class are individuals who have personal injury claims resulting from the 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.

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

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

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

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

- a) Whether Mercedes engaged in the conduct alleged herein;
- b) Whether Mercedes designed, advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the stream of commerce in the United States;

c) Whether the BlueTEC Clean Diesel engine system in the Affected Vehicles emit pollutants at levels that do not make them “clean” diesels and that do not comply with U.S. EPA requirements;

e) Whether Mercedes knew about the comparatively and unlawfully high emissions and, if so, how 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 and constitutes breach of contract and fraudulent concealment as asserted herein;

h) Whether Plaintiffs and the other Class members overpaid for their Affected Vehicles;

j) Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

161. **Typicality**: Federal Rule of Civil Procedure 23(a)(3): Plaintiffs’ 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.

162. **Adequacy**: Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Classes they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Classes’ interests will be fairly and adequately protected by Plaintiffs and their counsel.

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

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

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

COUNT I

**VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT
(N.J.S.A. §§ 56:8-1, *ET SEQ.*)**

165. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

166. Plaintiffs bring this Count on behalf of the Nationwide Class and New Jersey Subclass.

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

168. In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive. Further, Mercedes’ acts and practices described herein offend established public policy because the harm they cause to consumers, motorists, and pedestrians outweighs any benefit associated with such practices, and because Mercedes fraudulently concealed the defective nature of the Affected Vehicles from consumers.

169. Mercedes’ actions as set forth above occurred in the conduct of trade or commerce.

170. Mercedes’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

171. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class and Subclass.

172. Mercedes knew or should have known that its conduct violated the New Jersey CFA.

173. Mercedes owed Plaintiffs and the Class and Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Class and Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Class and Subclass that contradicted these representations.

174. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

175. Mercedes’ conduct proximately caused injuries to Plaintiffs and the other Class and Subclass members.

176. Mercedes’ conduct proximately caused injuries to Plaintiffs and the other Class and Subclass members.

177. Plaintiff and the other Class and Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’

conduct in that Plaintiffs and the other Class and Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

178. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

179. Pursuant to N.J.S.A. § 56:8-20, Plaintiffs will serve the New Jersey Attorney General with a copy of this Complaint within 10 days of filing.

COUNT II
BREACH OF CONTRACT
(BASED ON NEW JERSEY LAW)

180. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

181. Plaintiffs bring this Count on behalf of the Nationwide Class and New Jersey Subclass.

182. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Class members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

183. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiffs and the other New Jersey Class members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and thus less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON NEW JERSEY LAW)

185. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

186. Plaintiffs bring this Count on behalf of the Nationwide Class and New Jersey Subclass.

187. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the

truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

188. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

189. Mercedes knew these representations were false when made.

190. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

191. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

192. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to

disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

193. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

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

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

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

197. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the

truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

199. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

200. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

201. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in

value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

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

203. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

B. Claims Brought on Behalf of the Alabama Subclass

COUNT I

**VIOLATIONS OF THE ALABAMA DECEPTIVE TRADE PRACTICES ACT
(ALA. CODE §§ 8-19-1, *ET SEQ.*)**

205. Plaintiff Jonathan Mose (Plaintiff for purposes of all Alabama Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

206. Plaintiff brings this Count on behalf of the Alabama Subclass.

207. Plaintiff and the Subclass members are “consumers” within the meaning of ALA. CODE § 8-19-3(2).

208. Plaintiff, the Subclass members, and Mercedes are “persons” within the meaning of ALA. CODE § 8-19-3(5).

209. The Affected Vehicles are “goods” within the meaning of ALA. CODE § 8-19-3(3).

210. Mercedes was and is engaged in “trade or commerce” within the meaning of ALA. CODE § 8-19-3(8).

211. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several specific actions to be unlawful, including: “(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” ALA. CODE § 8-19-5.

212. Plaintiff intends to assert a claim under the Alabama DTPA. Plaintiff will make a demand in satisfaction of ALA. CODE § 8-19-3 and may amend this Complaint to assert claims under the Alabama DTPA once the required 15 days have elapsed. This paragraph is included

for purposes of notice only and is not intended to actually assert a claim under the Alabama DTPA.

COUNT II

BREACH OF CONTRACT (BASED ON ALABAMA LAW)

213. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

214. Plaintiff brings this Count on behalf of the Alabama Subclass.

215. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

216. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected

Vehicles turns off or is limited during normal driving conditions, and thus less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT

(BASED ON ALABAMA LAW)

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

219. This claim is brought on behalf of the Alabama Subclass.

220. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

221. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

222. Mercedes knew these representations were false when made.

223. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

224. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

225. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

226. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts, and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

229. Mercedes' false representations were material to consumers, because they concerned the quality of the affected vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiff and Subclass members, highly valued that the

vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

230. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

233. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

234. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the

Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

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

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

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

C. Claims Brought on Behalf of the Arizona Subclass

COUNT I

**VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT
(ARIZONA REV. STAT. §§ 44-1521, *ET SEQ.*)**

238. Plaintiff Lorrie Vidal (Plaintiff for purposes of all Arizona Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

239. Plaintiff brings this Count on behalf of the Arizona Subclass.

240. The Arizona CFA provides that “[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, ... misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale ... of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.” ARIZ. REV. STAT. § 44-1522(A). In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

241. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes’ failure to disclose the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above.

242. Plaintiff and Subclass members reasonably relied upon Mercedes’ false misrepresentations. They had no way of knowing that Mercedes’ representations were false and

gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

244. Mercedes' deception, fraud, misrepresentation, concealment, suppression or omission of material facts were likely to and did in fact deceive reasonable consumers.

245. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

246. Mercedes knew or should have known that its conduct violated the Arizona Consumer Fraud Act.

247. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

248. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

249. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

250. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

251. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

252. Plaintiff and the Subclass seek monetary relief against Mercedes in an amount to be determined at trial. Plaintiff and the Subclass also seek punitive damages because Mercedes engaged in aggravated and outrageous conduct with an evil mind.

253. Plaintiff also seeks attorneys' fees and any other just and proper relief available.

COUNT II

BREACH OF CONTRACT (BASED ON ARIZONA LAW)

254. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

255. Plaintiff brings this Count on behalf of the Arizona Subclass.

256. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

257. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and thus less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON ARIZONA LAW)

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

260. This claim is brought on behalf of the Arizona Subclass.

261. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

262. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

263. Mercedes knew these representations were false when made.

264. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

265. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

266. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

267. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

268. Plaintiff and Subclass members reasonably relied upon Mercedes’ deception. They had no way of knowing that Mercedes’ representations were false and/or misleading. As

consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

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

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

271. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with

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

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

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

274. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

276. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, and of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes

brand name attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

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

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

D. Claims Brought on Behalf of the California Subclass

COUNT I

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

279. Plaintiffs Catherine Roberts, Gwendolyn Andary, Dr. Adrian Clive Roberts, and Bradford Smith (Plaintiffs, for purposes of all California Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

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

281. 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."

282. 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 or is limited during normal driving conditions;
- 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 Plaintiffs and the other Subclass members that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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;
- 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.

283. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

284. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

285. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and

gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

286. Mercedes knew or should have known that its conduct violated the UCL.

287. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

288. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

289. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

290. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that

Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

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

292. Mercedes' misrepresentations and omissions alleged herein caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain defective BlueTEC Clean Diesel engine systems that failed to comply with EPA and California emissions standards.

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

294. Plaintiffs request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and members of the Subclass any money it acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such other as may be appropriate.

COUNT II

VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE §§ 1750, *ET SEQ.*)

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

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

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

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

299. Plaintiffs and the other Subclass members are "consumers" as defined in Cal. Civ. Code § 1761(d), and Plaintiffs, the other Subclass members, and Mercedes are "persons" as defined in Cal. Civ. Code § 1761(c).

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

301. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were equipped with defective BlueTEC Clean Diesel engine systems that failed EPA and California emissions standards.

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

- i. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of goods.

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

303. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

304. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

305. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

306. Mercedes knew or should have known that its conduct violated the CLRA.

307. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

308. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

309. Mercedes’ conduct proximately caused injuries to Plaintiffs and the other Subclass members.

310. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

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

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

313. The facts concealed and omitted by Mercedes from Plaintiffs and the other Subclass members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had Plaintiffs and the other Subclass members known about the defective nature of the Affected Vehicles, and their non-compliance with EPA requirements, they would not have purchased or leased the Affected Vehicles or would not have paid the prices they paid.

314. Plaintiffs and the Subclass have provided Mercedes with notice of its violations of the CLRA pursuant to Cal. Civ. Code § 1782(a).

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

316. Plaintiffs and the Subclass are entitled to recover actual and punitive damages under the CLRA pursuant to Civil Code § 1780(a), and an additional award of up to \$5,000 to each Plaintiff and Subclass member who is a "senior citizen."

COUNT III

VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW (CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.*)

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

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

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

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

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

322. Plaintiffs and the other Subclass members have suffered an injury in fact, including the loss of money or property, as a result of Mercedes’ unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected Vehicles, Plaintiffs and the other Subclass members relied on the misrepresentations and/or omissions of Mercedes with respect to the functionality, reliability, environmental-friendliness, and lawfulness of the Affected Vehicles. Mercedes’ representations turned out not to be true because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the Affected

Vehicles are distributed with BlueTEC Clean Diesel engine systems that include defective emissions controls and a “Defeat Device”. Had Plaintiffs and the other Subclass members known this, they would not have purchased or leased their Affected Vehicles and/or paid as much for them. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

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

324. Plaintiffs, individually and on behalf of the other Subclass members, request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and the other Subclass members any money Mercedes acquired by unfair competition, including restitution and/or restitutionary disgorgement and for such other relief as may be appropriate.

COUNT IV

BREACH OF CONTRACT (BASED ON CALIFORNIA LAW)

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

326. Plaintiffs bring this Count on behalf of the California Subclass members.

327. Mercedes’ misrepresentations and omissions alleged herein, including Mercedes’ failure to disclose the existence of the BlueTEC Clean Diesel engine system’s defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected

Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

328. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes rendering each Affected Vehicle non-EPA-compliant, and thus less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT V

FRAUDULENT CONCEALMENT (BASED ON CALIFORNIA LAW)

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

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

332. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had

defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

333. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

334. Mercedes knew these representations were false when made.

335. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

336. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass

members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

337. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

338. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

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

340. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales

above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiffs and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

342. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having

volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

344. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

345. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information

concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

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

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

348. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

E. Claims Brought on Behalf of the Colorado Subclass

COUNT I

**VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT
(COLO. REV. STAT. §§ 6-1-101, *ET SEQ.*)**

350. Plaintiffs Keith Hall and Gina McVey (Plaintiffs, for purposes of all Colorado Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

351. Plaintiffs bring this Count on behalf of the Colorado Subclass.

352. Colorado's Consumer Protection Act (the "Colorado CPA") prohibits a person from engaging in a "deceptive trade practice," which includes knowingly making "a false representation as to the source, sponsorship, approval, or certification of goods," or "a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods." COLO. REV. STAT. § 6-1-105(1)(b), (e). The Colorado CPA further prohibits "represent[ing] that goods ... are of a particular standard, quality, or grade ... if he knows or should know that they are of another," and "advertis[ing] goods ... with intent not to sell them as advertised." COLO. REV. STAT. § 6-1-105(1)(g), (i).

353. Mercedes is a "person" under § 6-1-102(6) of the Colorado CPA, COL. REV. STAT. § 6-1-101, *et seq.*

354. Plaintiffs and Colorado Subclass members are "consumers" for the purpose of COL. REV. STAT. § 6-1-113(1)(a) who purchased or leased one or more Affected Vehicles.

355. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, that the vehicles have a "Defeat Device," and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive. Further, Mercedes' acts and practices described herein offend established public policy because the harm they cause to consumers, motorists, and pedestrians outweighs any benefit associated with such practices, and because Mercedes fraudulently concealed the defective nature of the Affected Vehicles from consumers.

356. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

357. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

358. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

359. Mercedes knew or should have known that its conduct violated the Colorado CPA.

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

361. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

362. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

363. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

364. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

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

366. Pursuant to COL. REV. STAT. § 6-1-113, Plaintiffs and the Subclass seek monetary relief against Mercedes measured as the greater of (a) actual damages in an amount to be determined at trial and the discretionary trebling of such damages, or (b) statutory damages in the amount of \$500 for each Plaintiff and each Subclass member.

367. Plaintiffs and the Subclass also seek declaratory relief, attorneys' fees, and any other just and proper relief available under the Colorado CPA.

COUNT II

BREACH OF CONTRACT (BASED ON COLORADO LAW)

368. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

369. Plaintiffs bring this Count on behalf of the Colorado Subclass members.

370. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass

members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

371. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON COLORADO LAW)

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

374. This claim is brought on behalf of the Colorado Subclass.

375. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

376. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

377. Mercedes knew these representations were false when made.

378. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

379. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than

gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

380. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

381. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

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

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

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

385. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

387. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

388. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

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

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

391. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

F. Claims Brought on Behalf of the Connecticut Subclass

COUNT I

**VIOLATIONS OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT
(CONN. GEN. STAT. ANN. §§ 42-110A, *ET SEQ.*)**

393. Plaintiff John Lingua (Plaintiff for purposes of all Connecticut Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

394. Plaintiff brings this Count on behalf of the Connecticut Subclass.

395. Plaintiff and Mercedes are each "persons" as defined by CONN. GEN. STAT. ANN. § 42-110a(3).

396. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA") provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." CONN. GEN. STAT. ANN. § 42-110b(a). The Connecticut UTPA further provides a private right of action under CONN. GEN. STAT. ANN. § 42-110g(a). In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer

would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices because its conduct (1) offends public policy as it has been established by statutes, the common law or other established concept of unfairness, (2) is immoral, unethical, oppressive or unscrupulous; or (3) causes substantial injury to consumers, competitors or other business persons. The harm caused to consumers, motorists, and pedestrians outweighs any benefit associated with such practices, and Mercedes fraudulently concealed the defective nature of the Affected Vehicles from consumers.

397. Mercedes has also engaged in deceptive conduct because (1) it made representations, omissions, or engaged in other conduct likely to mislead consumers; (2) consumers interpret the message reasonably under the circumstances; and (3) the misleading representation, omission, or practice is material—that is, likely to affect consumer decisions or conduct.

398. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above.

399. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

401. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

402. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

403. Mercedes knew or should have known that its conduct violated the Connecticut UTPA.

404. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

405. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

406. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

407. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

408. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

409. Plaintiff and the other Class members sustained damages as a result of Mercedes' unlawful acts, and are therefore entitled to damages and other relief as provided under the Connecticut UTPA.

410. Plaintiff also seeks court costs and attorneys' fees as a result of Mercedes' violation of the Connecticut UTPA as provided in CONN. GEN. STAT. ANN. § 42-110g(d). A copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with CONN. GEN. STAT. ANN. § 42-110g(c).

COUNT II

BREACH OF CONTRACT (BASED ON CONNECTICUT LAW)

411. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

412. Plaintiff brings this Count on behalf of the Connecticut Subclass members.

413. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

414. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, rendering the Affected Vehicles less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

**FRAUDULENT NON-DISCLOSURE
(BASED ON CONNECTICUT LAW)**

416. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

417. Plaintiff brings this Count on behalf of the Connecticut Subclass.

418. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

419. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

420. Mercedes knew these representations were false when made.

421. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of

Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

422. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

423. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

424. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

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

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

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

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

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

431. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

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

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

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

G. Claims Brought on Behalf of the Delaware Subclass

COUNT I

**VIOLATIONS OF THE DELAWARE CONSUMER FRAUD ACT
(DEL. CODE §§ 2513, *ET SEQ.*)**

436. Plaintiff Billy Fox, Jr. (Plaintiff, for purposes of all Delaware Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

437. Plaintiff brings this Count on behalf of the Delaware Subclass.

438. Mercedes is a "person" within the meaning of 6 DEL. CODE § 2511(7).

439. The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise,

misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby.” 6 DEL. CODE § 2513(a). In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes has engaged in deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of the Affected Vehicles.

440. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes’ failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

441. Plaintiff and Subclass members reasonably relied upon Mercedes’ false misrepresentations. They had no way of knowing that Mercedes’ representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes’ deception on their own.

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

443. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

444. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

445. Mercedes knew or should have known that its conduct violated the Delaware Consumer Fraud Act.

446. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

447. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

448. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

449. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

450. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

451. Plaintiff seeks damages under the Delaware CFA for injury resulting from the direct and natural consequences of Mercedes' unlawful conduct. *See, e.g., Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiff also seeks declaratory relief, attorneys' fees, and any other just and proper relief available under the Delaware CFA.

452. Mercedes engaged in gross, oppressive, or aggravated conduct justifying the imposition of punitive damages.

COUNT II

BREACH OF CONTRACT (BASED ON DELAWARE LAW)

453. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

454. Plaintiff brings this Count on behalf of the Delaware Subclass.

455. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles

turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

456. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they are thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON DELAWARE LAW)

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

459. This claim is brought on behalf of the Delaware Subclass.

460. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

461. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

462. Mercedes knew these representations were false when made.

463. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

464. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

465. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

466. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

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

470. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

473. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

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

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

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

H. Claims Brought on Behalf of the Florida Subclass

COUNT I

**VIOLATIONS OF THE FLORIDA UNFAIR AND DECEPTIVE TRADE
PRACTICES ACT
(FLA. STAT. §§ 501.201, *ET SEQ.*)**

478. Plaintiff Dedrick Watkins (Plaintiff for purposes of all Florida Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

479. Plaintiff brings this Count on behalf of the Florida Subclass.

480. Plaintiff and the Subclass are "consumers" within the meaning of Florida Unfair and Deceptive Trade Practices Act ("Florida UDTPA"), FLA. STAT. § 501.203(7).

481. Mercedes engaged in "trade or commerce" within the meaning of FLA. STAT. § 501.203(8).

482. Florida's Deceptive and Unfair Trade Practices Act prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." FLA. STAT. § 501.204(1). Mercedes participated in unfair and deceptive trade practices that violated the Florida UDTPA as described herein. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving

conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in FLA. STAT. § 501.204(1). Mercedes' conduct offends established public policy, is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and is likely to mislead consumers.

483. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above.

484. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

486. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

487. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

488. Mercedes knew or should have known that its conduct violated the Florida UDTPA.

489. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

490. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a “Defeat Device,” and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

491. Mercedes’ conduct proximately caused injuries to Plaintiff and the other Subclass members.

492. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that

Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

493. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

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

COUNT II

BREACH OF CONTRACT (BASED ON FLORIDA LAW)

495. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

496. Plaintiffs bring this Count on behalf of the Florida Subclass members.

497. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other

Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

498. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes rendering each Affected Vehicle non-EPA-compliant, and that they are thus less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON FLORIDA LAW)

500. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

501. Plaintiff brings this Count on behalf of the Florida Subclass.

502. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes'

advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

503. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

504. Mercedes knew these representations were false when made.

505. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

506. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

507. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

508. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

510. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that

Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

512. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were

material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

515. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was

in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

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

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

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

I. Claims Brought on Behalf of the Georgia Subclass

COUNT I

**VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT
(GA. CODE ANN. § 10-1-390, ET SEQ.)**

520. Plaintiffs A. Eric Ngwashi and Bobby Hamilton (Plaintiffs for purposes of all Georgia Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

521. The Georgia Fair Business Practices Act ("Georgia FBPA") declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, GA. CODE. ANN. § 10-1-393(a), including, but not limited to, "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," "[r]epresenting that goods or services are of a particular standard, quality, or grade ... if they are of another," and "[a]dvertising goods or services with intent not to sell them as advertised." GA. CODE. ANN. § 10-1-393(b). Mercedes participated in unfair and deceptive trade practices that violated the Georgia FBPA as described herein. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more

pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in unfair or deceptive acts or practices by representing that the Affected Vehicles has having approval, characteristics, ingredients, uses, and benefits that they do not have, representing that the Affected Vehicles are of a particular standard, quality, or grade when they are of another, and "advertising the Affected Vehicles with intent not to sell them as advertised.

522. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

523. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

525. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

526. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

527. Mercedes knew or should have known that its conduct violated the Georgia FBPA.

528. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

529. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a “Defeat Device,” and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

530. Mercedes’ conduct proximately caused injuries to Plaintiffs and the other Subclass members.

531. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that

Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

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

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

534. Plaintiff and the Georgia Class are entitled to recover damages and exemplary damages (for intentional violations) per GA. CODE. ANN § 10-1-399(a).

535. Plaintiffs also seek attorneys' fees and any other just and proper relief available under the Georgia FBPA per GA. CODE. ANN § 10-1-399.

536. On March 28, 2016, certain Plaintiffs sent a letter complying with GA. CODE. ANN § 10-1-399(b). Because Mercedes failed to remedy its unlawful conduct within the requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the Georgia Class are entitled.

COUNT II

BREACH OF CONTRACT (BASED ON GEORGIA LAW)

537. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

538. This claim is brought on behalf of the Georgia Subclass.

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

540. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes rendering each Affected Vehicle non-EPA-compliant, and that they are thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

**FRAUDULENT CONCEALMENT
(BASED ON GEORGIA LAW)**

542. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

543. This claim is brought on behalf of the Georgia Subclass.

544. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

545. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

546. Mercedes knew these representations were false when made.

547. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of

Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

548. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

549. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

550. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

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

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

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

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

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

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

556. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

557. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

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

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

560. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

J. Claims Brought on Behalf of the Idaho Subclass

COUNT I

**VIOLATIONS OF THE IDAHO CONSUMER PROTECTION ACT
(IDAHO CIV. CODE §§ 48-601, *ET SEQ.*)**

562. Plaintiff Scott Morgan (Plaintiff for purposes of all Idaho Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

563. Plaintiff brings this Count on behalf of the Idaho Subclass.

564. Mercedes is a "person" under the Idaho Consumer Protection Act ("Idaho CPA"), IDAHO CIV. CODE § 48-602(1).

565. Mercedes' acts or practices as set forth above occurred in the conduct of "trade" or "commerce" under IDAHO CIV. CODE § 48-602(2).

566. IDAHO CODE § 48-603 prohibits the following conduct in trade or commerce: engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer; and engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section 48-603C. Mercedes participated in misleading, false, or deceptive and unconscionable acts that violated the Idaho CPA. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

567. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

568. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

570. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

571. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

572. Mercedes knew or should have known that its conduct violated the Idaho CPA.

573. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

574. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

575. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

576. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

577. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

578. Plaintiff also seeks attorneys' fees and any other just and proper relief available under the Idaho CPA.

579. Plaintiff also seeks punitive damages against Mercedes because Mercedes' conduct evidences an extreme deviation from reasonable standards. Mercedes' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT II

BREACH OF CONTRACT (BASED ON IDAHO LAW)

580. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

581. Plaintiff brings this Count on behalf of the Idaho Subclass.

582. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

583. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON IDAHO LAW)

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

586. This claim is brought on behalf of the Idaho Subclass.

587. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

588. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

589. Mercedes knew these representations were false when made.

590. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

591. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

592. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

593. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

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

597. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

600. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

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

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

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

K. Claims Brought on Behalf of the Illinois Subclass

COUNT I

**VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT
(815 ILCS 505/1, ET SEQ. AND 720 ILCS 295/1A)**

605. Plaintiff Maryana Melnyk (Plaintiff for purposes of all Illinois Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

606. This claim is brought on behalf of the Illinois Subclass.

607. Defendant is a "person" as that term is defined in 815 ILCS 505/1(c).

608. Plaintiff and the Subclass members are "consumers" as that term is defined in 815 ILCS 505/1(e).

609. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of trade or commerce ... whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2.

610. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact in the conduct of trade or commerce as prohibited by the Illinois CFA.

611. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

612. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

614. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

615. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

616. Mercedes knew or should have known that its conduct violated the Illinois CFA.

617. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

618. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

619. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

620. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

621. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

622. Pursuant to 815 ILCS 505/10a(a), Plaintiff and the Subclass members seek monetary relief against Mercedes in the amount of actual damages, as well as punitive damages because Mercedes acted with fraud and/or malice and/or was grossly negligent.

623. Plaintiff also seeks punitive damages, attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1, *et seq.*

COUNT II

BREACH OF CONTRACT (BASED ON ILLINOIS LAW)

624. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

625. Plaintiff brings this Count on behalf of the Illinois Subclass.

626. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as 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

purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

627. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes rendering each Affected Vehicle non-EPA-compliant, and that they were thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON ILLINOIS LAW)

629. Plaintiff incorporate by reference all preceding allegations as though fully set forth herein.

630. This claim is brought on behalf of the Illinois Subclass.

631. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

632. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

633. Mercedes knew these representations were false when made.

634. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

635. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

636. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

637. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

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

641. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

644. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

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

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

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

L. Claims Brought on Behalf of the Kentucky Subclass

COUNT I

**VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT
(KY. REV. STAT. §§ 367.110, *ET SEQ.*)**

649. Plaintiff Devin Downs (Plaintiff for purposes of all Kentucky Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

650. Plaintiff brings this Count on behalf of the Kentucky Subclass.

651. Mercedes, Plaintiff, and the Kentucky Subclass are "persons" within the meaning of the KY. REV. STAT. § 367.110(1).

652. Mercedes engaged in "trade" or "commerce" within the meaning of KY. REV. STAT. § 367.110(2).

653. The Kentucky Consumer Protection Act ("Kentucky CPA") makes unlawful "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce" KY. REV. STAT. § 367.170(1). In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more

pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in deceptive business practices prohibited by the Kentucky CPA.

654. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above.

655. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

657. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

658. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

659. Mercedes knew or should have known that its conduct violated the Kentucky CPA.

660. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

661. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a “Defeat Device,” and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

662. Mercedes’ conduct proximately caused injuries to Plaintiff and the other Subclass members.

663. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

664. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

665. Pursuant to KY. REV. STAT. ANN. § 367.220, Plaintiff and the Subclass seek to recover actual damages in an amount to be determined at trial; declaratory relief; attorneys' fees; and any other just and proper relief available under KY. REV. STAT. ANN. § 367.220.

COUNT II

BREACH OF CONTRACT (BASED ON KENTUCKY LAW)

666. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

667. Plaintiff brings this Count on behalf of the Kentucky Subclass.

668. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

669. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other

things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUD BY OMISSION

(BASED ON KENTUCKY LAW)

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

672. This claim is brought on behalf of the Kentucky Subclass.

673. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

674. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low

emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

675. Mercedes knew these representations were false when made.

676. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

677. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

678. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant

with EPA emissions requirements, making other disclosures about the emission system deceptive.

679. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

682. Mercedes' false representations were material to consumers, because they concerned the quality of the affected vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes

well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

683. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced*

emission diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

686. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

687. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and

the serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

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

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

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

M. Claims Brought on Behalf of the Maryland Subclass

COUNT I

**VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT
(MD. CODE COM. LAW §§ 13-101, *ET SEQ.*)**

691. Plaintiffs Gustavo Fraga-Errecart and Hassan Zavareei (Plaintiffs for purposes of all Maryland Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

692. This claim is brought only on behalf of members of the Maryland Subclass.

693. Mercedes, Plaintiffs, and the Maryland Subclass are “persons” within the meaning of MD. CODE COM. LAW § 13-101(h).

694. The Maryland Consumer Protection Act (“Maryland CPA”) provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. MD. COM. LAW CODE § 13-303. In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, that the vehicles have “Defeat Device,” and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices. Mercedes’ acts and practices offend public policy; were immoral, unethical, oppressive, or unscrupulous; caused substantial injury to consumers; had the capacity, tendency or effect of deceiving or misleading consumers; failed to state a material fact that deceives or tends to deceive; and constitute deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection therewith.

695. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

696. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

698. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

699. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

700. Mercedes knew or should have known that its conduct violated the Maryland CPA.

701. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

702. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a “Defeat Device,” and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

703. Mercedes’ conduct proximately caused injuries to Plaintiff and the other Subclass members.

704. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

705. Mercedes’ violations present a continuing risk to Plaintiffs as well as to the general public. Mercedes’ unlawful acts and practices complained of herein affect the public interest.

706. Pursuant to MD. CODE COM. LAW § 13-408, Plaintiffs and the Maryland Subclass seek actual damages, attorneys’ fees, and any other just and proper relief available under the Maryland CPA.

COUNT II

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

707. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

708. Plaintiffs bring this Count on behalf of the Maryland Subclass members.

709. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

710. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MARYLAND LAW)

712. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

713. This claim is brought on behalf of the Maryland Subclass.

714. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

715. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

716. Mercedes knew these representations were false when made.

717. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

718. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

719. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

720. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA

emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

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

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

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

724. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

725. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean

diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

726. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

727. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

728. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified

previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

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

730. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

N. Claims Brought on Behalf of the Massachusetts Subclass

COUNT I

**VIOLATIONS OF THE MASSACHUSETTS CONSUMER
PROTECTION ACT
(MASS. GEN. LAWS CH. 93A)**

732. Plaintiffs Terrence Garmey and Christopher Gates (Plaintiffs for purposes of all Massachusetts Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

733. Plaintiffs intend to assert a claim under the Massachusetts Consumer Protection Act (“MCPA”), which makes it unlawful to engage in any “[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce.” MASS. GEN. LAWS CH. 93A, § 2(1). Plaintiffs will make a demand in satisfaction of MASS. GEN. LAWS CH. 93A, § 9(3), and may amend this Complaint to assert claims under the MCPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the MCPA.

COUNT II

BREACH OF CONTRACT (BASED ON MASSACHUSETTS LAW)

734. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

735. Plaintiffs bring this Count on behalf of the Massachusetts Subclass members.

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

737. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes rendering each Affected Vehicle non-EPA-compliant, and that they were thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MASSACHUSETTS LAW)

739. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

740. This claim is brought on behalf of the Massachusetts Subclass.

741. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the

truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

742. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

743. Mercedes knew these representations were false when made.

744. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

745. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

746. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to

disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

747. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

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

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

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

751. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the

truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

753. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

754. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

755. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in

value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

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

757. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

O. Claims Brought on Behalf of the Michigan Subclass

COUNT I

**VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
(MICH. COMP. LAWS § 445.903, *ET SEQ.*)**

759. Plaintiff Brenda O’Neal (Plaintiff for purposes of all Michigan Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

760. This claim is brought on behalf of the Michigan Subclass.

761. Plaintiff and the Michigan Class Members were “person[s]” within the meaning of the MICH. COMP. LAWS § 445.902(1)(d).

762. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce ...”, including: “(c) Representing that goods or services have ... characteristics ... that they do not have;” “(e) Representing that goods or services are of a particular standard ... if they are of another;” “(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;” “(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;” “(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;” and “(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.” MICH. COMP. LAWS § 445.903(1). In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would

expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

763. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above.

764. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

766. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

767. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

768. Mercedes knew or should have known that its conduct violated the Michigan CPA.

769. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

770. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

771. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

772. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

773. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

774. Plaintiff seeks monetary relief measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$250 for Plaintiff and each Michigan Class member; reasonable attorneys' fees; and any other just and proper relief available under MICH. COMP. LAWS § 445.911.

775. Plaintiff also seeks punitive damages against Mercedes because it carried out despicable conduct with willful and conscious disregard of the rights of others. Mercedes' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT II

BREACH OF CONTRACT (BASED ON MICHIGAN LAW)

776. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

777. Plaintiff brings this Count on behalf of the Michigan Subclass.

778. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

779. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MICHIGAN LAW)

781. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

782. This claim is brought on behalf of the Michigan Subclass.

783. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

784. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

785. Mercedes knew these representations were false when made.

786. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

787. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

788. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

789. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

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

793. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

796. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

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

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

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

P. Claims Brought on Behalf of the Minnesota Subclass

COUNT I

**VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT
(MINN. STAT. § 325F.68, *ET SEQ.*)**

801. Plaintiff Charles Wolford (Plaintiff for purposes of all Minnesota Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

802. This claim is brought on behalf of the Minnesota Subclass.

803. The Affected Vehicles constitute "merchandise" within the meaning of MINN. STAT. § 325F.68(2).

804. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby ..." MINN. STAT. § 325F.69(1). The Minnesota CFA also prohibits the dissemination, directly or indirectly, of an advertisement "of any sort regarding merchandise," where that advertisement contains "any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading." MINN. STAT.

§ 325F.67. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes used or employed a fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby and disseminated advertisements containing material assertions, representations, or statements of fact which were untrue, deceptive, or misleading, all in violation of the Minnesota CFA.

805. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

806. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

808. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

809. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

810. Mercedes knew or should have known that its conduct violated the Minnesota CFA.

811. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

812. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

813. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

814. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

815. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

816. Pursuant to MINN. STAT. § 8.31(3a), Plaintiff and the Minnesota Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA.

817. Plaintiff also seeks punitive damages under MINN. STAT. § 549.20(1)(a) given the clear and convincing evidence that Mercedes' acts show deliberate disregard for the rights of others.

COUNT II

BREACH OF CONTRACT (BASED ON MINNESOTA LAW)

818. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

819. Plaintiff brings this Count on behalf of the Minnesota Subclass.

820. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

821. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MINNESOTA LAW)

823. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

824. This claim is brought on behalf of the Minnesota Subclass.

825. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

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

827. Mercedes knew these representations were false when made.

828. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

829. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

830. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

831. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

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

835. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

838. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

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

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

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

Q. Claims Brought on Behalf of the Missouri Subclass

COUNT I

**VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT
(MO. REV. STAT. §§ 407.010, *ET SEQ.*)**

843. Plaintiff Craig Thorson (Plaintiffs for purposes of all Missouri Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

844. Plaintiff brings this Count on behalf of the Missouri Subclass.

845. Mercedes, Plaintiff and the Missouri Subclass are "persons" within the meaning of MO. REV. STAT. § 407.010(5).

846. Mercedes engaged in "trade" or "commerce" in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

847. The Missouri Merchandising Practices Act ("Missouri MPA") makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise." MO. REV. STAT. § 407.020. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during

normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes used or employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce, in violation of the Missouri MPA. Mercedes' conduct offends public policy; is unethical, oppressive, or unscrupulous; and presents a risk of, or causes, substantial injury to consumers.

848. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above.

849. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

851. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

852. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

853. Mercedes knew or should have known that its conduct violated the Missouri MPA.

854. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

855. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a “Defeat Device,” and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

856. Mercedes’ conduct proximately caused injuries to Plaintiff and the other Subclass members.

857. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that

Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

858. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

859. Mercedes is liable to Plaintiff and the Missouri Subclass for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, and any other just and proper relief under MO. REV. STAT. § 407.025.

COUNT II

BREACH OF CONTRACT (BASED ON MISSOURI LAW)

860. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

861. Plaintiff brings this Count on behalf of the Missouri Subclass members.

862. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other

Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

863. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON MISSOURI LAW)

865. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

866. This claim is brought on behalf of the Missouri Subclass.

867. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes'

advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

868. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

869. Mercedes knew these representations were false when made.

870. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

871. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

872. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

873. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

875. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that

Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

877. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were

material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

880. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was

in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

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

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

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

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

R. Claims Brought on Behalf of the Montana Subclass

COUNT I

**VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973
(MONT. CODE ANN. § 30-14-101, *ET SEQ.*)**

885. Plaintiff Henry Silverio (Plaintiff for purposes of all Montana Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

886. This claim is brought only on behalf of the Montana Subclass.

887. Mercedes, Plaintiff and the Montana Subclass are "persons" within the meaning of MONT. CODE ANN. § 30-14-102(6).

888. Montana Subclass Members are "consumer[s]" under MONT. CODE ANN. § 30-14-102(1).

889. The sale or lease of the Affected Vehicles to Montana Subclass Members occurred within "trade and commerce" within the meaning of MONT. CODE ANN. § 30-14-102(8), and Mercedes committed deceptive and unfair acts in the conduct of "trade and commerce" as defined in that statutory section.

890. The Montana Unfair Trade Practices and Consumer Protection Act ("Montana CPA") makes unlawful any "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." MONT. CODE ANN. § 30-14-103. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx

reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of the Montana CPA.

891. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above.

892. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

894. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

895. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

896. Mercedes knew or should have known that its conduct violated the Montana CPA.

897. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

898. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a “Defeat Device,” and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

899. Mercedes’ conduct proximately caused injuries to Plaintiff and the other Subclass members.

900. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in

value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

901. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

902. Because Mercedes' unlawful methods, acts, and practices have caused Plaintiff and Montana Subclass members to suffer an ascertainable loss of money and property, Plaintiff and the Subclass seek from Mercedes actual damages or \$500, whichever is greater, discretionary treble damages, reasonable attorneys' fees, and any other relief the Court considers necessary or proper, under MONT. CODE ANN. § 30-14-133.

COUNT II

BREACH OF CONTRACT (BASED ON MONTANA LAW)

903. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

904. Plaintiff brings this Count on behalf of the Montana Subclass members.

905. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other

Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

906. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that they were thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUD BY CONCEALMENT (BASED ON MONTANA LAW)

908. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

909. This claim is brought on behalf of the Montana Subclass.

910. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the

truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

911. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

912. Mercedes knew these representations were false when made.

913. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

914. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

915. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to

disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

916. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

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

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

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

920. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the

truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

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

923. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

924. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a

result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

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

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

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

S. Claims Brought on Behalf of the Nevada Subclass

COUNT I

**VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT
(NEV. REV. STAT. §§ 598.0903, *ET SEQ.*)**

928. Plaintiffs Shelia Reed and Richard Yanus (Plaintiffs for purposes of all Nevada Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

929. Plaintiffs bring this Count on behalf of the Nevada Subclass.

930. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), NEV. REV. STAT. § 598.0903, *et seq.*, prohibits deceptive trade practices. NEV. REV. STAT. § 598.0915 provides that a person engages in a “deceptive trade practice” if, in the course of business or occupation, the person: “5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith”; “7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model”; “9. Advertises goods or services with intent not to sell or lease them as advertised”; or “15. Knowingly makes any other false representation in a transaction.” Accordingly, Mercedes has violated the Nevada DTPA by knowingly representing that Affected Vehicles have uses and benefits which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and knowingly making other false representations in a transaction.

931. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

932. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

934. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

935. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

936. Mercedes knew or should have known that its conduct violated the Nevada DTPA.

937. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or

- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

938. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

939. Mercedes’ conduct proximately caused injuries to Plaintiffs and the other Subclass members.

940. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

941. Mercedes’ violations present a continuing risk to Plaintiffs as well as to the general public. Mercedes’ unlawful acts and practices complained of herein affect the public interest.

942. Accordingly, Plaintiffs and the Nevada Subclass seek their actual damages, punitive damages, costs of Court, attorney’s fees, and all other appropriate and available remedies under the Nevada Deceptive Trade Practices Act. NEV. REV. STAT. § 41.600.

COUNT II

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

943. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

944. Plaintiffs bring this Count on behalf of the Nevada Subclass members.

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

946. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to

Mercedes, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

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

COUNT III

FRAUDULENT CONCEALMENT (BASED ON NEVADA LAW)

948. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

949. This claim is brought on behalf of the Nevada Subclass.

950. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

951. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low

emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

952. Mercedes knew these representations were false when made.

953. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

954. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

955. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-

compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

956. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

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

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

959. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes

well knew, its customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

960. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced*

emissions diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

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

962. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

963. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

964. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded

vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

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

966. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

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

T. Claims Brought on Behalf of the New York Subclass

COUNT I

**VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(N.Y. GEN. BUS. LAW § 349)**

968. Plaintiffs Thomas Weiss and John Laurino (Plaintiffs, for purposes of all New York Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

969. This claim is brought on behalf of the New York Subclass.

970. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. The challenged act or practice was "consumer-oriented;" (2) that the act or practice was misleading in a material way; and (3) Plaintiffs suffered injury as a result of the deceptive act or practice. Accordingly, Mercedes has violated General Business Law § 349.

971. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

972. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

974. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

975. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

976. Mercedes knew or should have known that its conduct violated General Business Law § 349.

977. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

978. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected

Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

979. Mercedes’ conduct proximately caused injuries to Plaintiffs and the other Subclass members.

980. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

981. Mercedes’ violations present a continuing risk to Plaintiffs as well as to the general public. Mercedes’ unlawful acts and practices complained of herein affect the public interest.

982. Pursuant to N.Y. GEN. BUS. LAW § 349(h), Plaintiffs and each Subclass member may recover actual damages, in addition to three times actual damages up to \$1,000 for Mercedes’ willful and knowing violation of N.Y. GEN. BUS. LAW § 349.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350 (N.Y. GEN. BUS. LAW § 350)

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

984. This claim is brought on behalf of the New York Subclass.

985. New York's General Business Law § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce[.]" False advertising includes "advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in the light of ... representations [made] with respect to the commodity...." N.Y. GEN. BUS. LAW § 350-a.

986. Mercedes caused to be made or disseminated throughout New York, through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Mercedes, to be untrue and misleading to consumers, including Plaintiffs and the other Subclass members.

987. Mercedes has violated N.Y. GEN. BUS. LAW § 350 because the misrepresentations and omissions alleged herein, including but not limited to Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

988. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

989. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of

deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

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

991. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

992. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

993. Mercedes knew or should have known that its conduct violated General Business Law § 350.

994. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

995. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass

members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

996. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

997. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

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

999. Plaintiffs and the other Subclass members are entitled to recover their actual damages or \$500, whichever is greater. Because Mercedes acted willfully or knowingly, Plaintiffs and the other Subclass members are entitled to recover three times actual damages, up to \$10,000.

COUNT III

BREACH OF CONTRACT (BASED ON NEW YORK LAW)

1000. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1001. Plaintiffs bring this Count on behalf of the New York Subclass members.

1002. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1003. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1004. As a direct and proximate result of Mercedes' breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT IV

**FRAUDULENT CONCEALMENT
(BASED ON NEW YORK LAW)**

1005. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1006. This claim is brought on behalf of the New York Subclass.

1007. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1008. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1009. Mercedes knew these representations were false when made.

1010. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of

Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1011. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1012. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1013. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

1014. Plaintiffs and Subclass members reasonably relied upon Mercedes' deception. They had no way of knowing that Mercedes' representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1015. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1016. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1017. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or

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

1018. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1019. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1020. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1021. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1022. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1023. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1024. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

U. Claims Brought on Behalf of the North Carolina Subclass

COUNT I

**VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE ACTS
AND PRACTICES ACT
(N.C. GEN. STAT. §§ 75-1.1, *ET SEQ.*)**

1025. Plaintiffs Vincent Minerva and Freddie T. Holbrook (Plaintiffs for purposes of all North Carolina Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

1026. Plaintiffs bring this Count on behalf of the North Carolina Subclass.

1027. Mercedes engaged in "commerce" within the meaning of N.C. GEN. STAT. § 75-1.1(b).

1028. The North Carolina UDTPA broadly prohibits “unfair or deceptive acts or practices in or affecting commerce.” N.C. GEN. STAT. § 75-1.1(a). In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices because (1) had the capacity or tendency to deceive, (2) offends public policy, (3) is immoral, unethical, oppressive or unscrupulous, or (4) causes substantial injury to consumers.

1029. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes’ failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1030. Plaintiffs and Subclass members reasonably relied upon Mercedes’ false misrepresentations. They had no way of knowing that Mercedes’ representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes’ deception on their own.

1031. Mercedes’ actions as set forth above occurred in the conduct of trade or commerce.

1032. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1033. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1034. Mercedes knew or should have known that its conduct violated the North Carolina UDTPA.

1035. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1036. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1037. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1038. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

1039. Mercedes' violations present a continuing risk to Plaintiffs as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

1040. Plaintiffs seek an order for treble their actual damages, costs of Court, attorney's fees, and any other just and proper relief available under the North Carolina Act, N.C. GEN. STAT. § 75-16.

1041. Plaintiffs also seek punitive damages against Mercedes because Mercedes' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith.

COUNT II

BREACH OF CONTRACT (BASED ON NORTH CAROLINA LAW)

1042. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1043. Plaintiffs bring this Count on behalf of the North Carolina Subclass members.

1044. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those

misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1045. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1046. As a direct and proximate result of Mercedes' breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON NORTH CAROLINA LAW)

1047. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1048. This claim is brought on behalf of the North Carolina Subclass.

1049. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1050. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1051. Mercedes knew these representations were false when made.

1052. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1053. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate

than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1054. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1055. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

1056. Plaintiffs and Subclass members reasonably relied upon Mercedes' deception. They had no way of knowing that Mercedes' representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1057. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1058. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1059. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1060. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1061. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1062. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1063. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1064. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1065. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1066. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

V. Claims Brought on Behalf of the Ohio Subclass

COUNT I

**VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT
(OHIO REV. CODE §§ 1345.01, *ET SEQ.*)**

1067. Plaintiff Andrew Deutsch (Plaintiff for purposes of all Ohio Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1068. This claim is brought on behalf of the Ohio Subclass.

1069. Plaintiff and the other Ohio Subclass members are "consumers" as defined by the Ohio Consumer Sales Practices Act, OHIO REV. CODE § 1345.01 (Ohio CSPA). Mercedes is a "supplier" as defined by the OCSPA. Plaintiff's and the other Ohio Subclass members' purchases or leases of Affected Vehicles were "consumer transactions" as defined by the Ohio CSPA.

1070. The Ohio CSPA, OHIO REV. CODE § 1345.02, broadly prohibits unfair or deceptive acts or practices in connection with a consumer transaction. Specifically, and without limitation of the broad prohibition, the Act prohibits suppliers from representing (i) that goods have characteristics or uses or benefits which they do not have; (ii) that their goods are of a particular quality or grade they are not; and (iii) the subject of a consumer transaction has been

supplied in accordance with a previous representation, if it has not. *Id.* Mercedes' conduct as alleged above and below constitutes unfair and/or deceptive consumer sales practices in violation of OHIO REV. CODE § 1345.02. In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; and supplying the Affected Vehicles based on misrepresentations; and otherwise engaging in conduct likely to deceive.

1071. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1072. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

1073. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1074. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1075. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1076. Mercedes knew or should have known that its conduct violated the Ohio CSPA.

1077. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1078. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1079. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1080. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

1081. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

1082. Plaintiff and the Subclass sustained damages as a result of Mercedes' unlawful acts and are, therefore, entitled to damages and other relief as provided under the Ohio CSPA.

1083. Plaintiff also seeks court costs and attorneys' fees as a result of Mercedes' violations of the OCSPA as provided in OHIO REV. CODE § 1345.09.

COUNT II

BREACH OF CONTRACT (BASED ON OHIO LAW)

1084. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1085. Plaintiff brings this Count on behalf of Ohio Subclass members.

1086. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1087. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1088. As a direct and proximate result of Mercedes' breach of contract, Plaintiff and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON OHIO LAW)

1089. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1090. This claim is brought on behalf of the Ohio Subclass.

1091. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1092. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1093. Mercedes knew these representations were false when made.

1094. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1095. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1096. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1097. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

1098. Plaintiff and Subclass members reasonably relied upon Mercedes' deception. They had no way of knowing that Mercedes' representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1099. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1100. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1101. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1102. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1103. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1104. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

1105. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1106. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1107. Accordingly, Mercedes is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1108. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

W. Claims Brought on Behalf of the Pennsylvania Subclass

COUNT I

**VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW
(73 P.S. §§ 201-1, *ET SEQ.*)**

1109. Plaintiff Wendell A. Dingle (Plaintiff for purposes of all Pennsylvania Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

1110. Plaintiff brings this Count on behalf of the Pennsylvania Subclass.

1111. Plaintiff purchased or leased their Affected Vehicle primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

1112. All of the acts complained of herein were perpetrated by Mercedes in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

1113. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i) "Representing that goods or services have ... characteristics, ... [b]enefits or qualities that they do not have;" (ii) "Representing that goods or services are of a particular standard, quality or grade ... if they are of another;" (iii) "Advertising goods or services with intent not to sell them as advertised;" and (iv) "Engaging in any other fraudulent or deceptive conduct which creates a

likelihood of confusion or misunderstanding.” 73 P.S. § 201-2(4). In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in deceptive business practices prohibited by the Pennsylvania CPL, including: representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising the Affected Vehicles with the intent not to sell them as advertised; and engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or of misunderstanding.

1114. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes’ failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1115. Plaintiff and Subclass members reasonably relied upon Mercedes’ false misrepresentations. They had no way of knowing that Mercedes’ representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes’ deception on their own.

1116. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1117. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1118. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1119. Mercedes knew or should have known that its conduct violated the Pennsylvania CPL.

1120. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1121. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1122. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1123. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

1124. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

1125. Mercedes is liable to Plaintiff and the Pennsylvania Subclass for treble their actual damages or \$100, whichever is greater, and attorneys' fees and costs. 73 P.S. § 201-9.2(a). Plaintiff and the Pennsylvania Class are also entitled to an award of punitive damages given that Mercedes' conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

COUNT II

BREACH OF CONTRACT (BASED ON PENNSYLVANIA LAW)

1126. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1127. Plaintiff brings this Count on behalf of the Pennsylvania Subclass.

1128. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1129. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1130. As a direct and proximate result of Mercedes' breach of contract, Plaintiff and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT

(BASED ON PENNSYLVANIA LAW)

1131. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1132. This claim is brought on behalf of the Pennsylvania Subclass.

1133. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1134. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1135. Mercedes knew these representations were false when made.

1136. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1137. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1138. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1139. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

1140. Plaintiff and Subclass members reasonably relied upon Mercedes' deception. They had no way of knowing that Mercedes' representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1141. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1142. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1143. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1144. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1145. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1146. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

1147. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1148. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1149. Accordingly, Mercedes is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1150. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

X. Claims Brought on Behalf of the Tennessee Subclass

COUNT I

**VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT
(TENN. CODE ANN. §§ 47-18-101, *ET SEQ.*)**

1151. Plaintiff Arthur Daschke (Plaintiff for purposes of all Tennessee Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

1152. Plaintiff brings this Count on behalf of the Tennessee Subclass.

1153. Plaintiff and the Tennessee Subclass are "natural persons" and "consumers" within the meaning of TENN. CODE ANN. § 47-18-103(2).

1154. Mercedes is a "person" within the meaning of TENN. CODE ANN. § 47-18-103(2).

1155. Mercedes' conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of TENN. CODE ANN. § 47-18-103(19).

1156. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce," including but not limited to: "Representing that goods or services have ... characteristics, [or] ... benefits ... that they do not have...;" "Representing that goods or services are of a particular standard, quality or grade ... if they are of another;" "Advertising goods or services with intent not to sell them as

advertised;” and “Engaging in any other act or practice which is deceptive to the consumer or any other person.” TENN. CODE ANN. § 47-18-104. In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes violated the Tennessee CPA by engaging in unfair or deceptive acts, including representing that Affected Vehicles have characteristics or benefits that they did not have; representing that Affected Vehicles are of a particular standard, quality, or grade when they are of another; advertising Affected Vehicles with intent not to sell them as advertised; and engaging in acts or practices that are deceptive to consumers.

1157. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes’ failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1158. Plaintiff and Subclass members reasonably relied upon Mercedes’ false misrepresentations. They had no way of knowing that Mercedes’ representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes’ deception on their own.

1159. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1160. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1161. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1162. Mercedes knew or should have known that its conduct violated the Tennessee CPA.

1163. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1164. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1165. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1166. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

1167. Mercedes' violations present a continuing risk to Plaintiff as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

1168. Pursuant to TENN. CODE § 47-18-109(a), Plaintiff and the Tennessee Subclass seek monetary relief against Mercedes measured as actual damages in an amount to be determined at trial, treble damages as a result of Mercedes' willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

COUNT II

BREACH OF CONTRACT (BASED ON TENNESSEE LAW)

1169. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1170. Plaintiff brings this Count on behalf of the Tennessee Subclass.

1171. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1172. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1173. As a direct and proximate result of Mercedes' breach of contract, Plaintiff and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUD BY CONCEALMENT (BASED ON TENNESSEE LAW)

1174. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1175. This claim is brought on behalf of the Tennessee Subclass.

1176. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1177. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1178. Mercedes knew these representations were false when made.

1179. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1180. Mercedes had a duty to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable

consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1181. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1182. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

1183. Plaintiff and Subclass members reasonably relied upon Mercedes' deception. They had no way of knowing that Mercedes' representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1184. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1185. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1186. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1187. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1188. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1189. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

1190. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1191. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1192. Accordingly, Mercedes is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1193. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Y. Claims Brought on Behalf of the Texas Subclass

COUNT I

**VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT
(TEX. BUS. & COM. CODE §§ 17.41, *ET SEQ.*)**

1194. Plaintiffs Dr. Chandrakant Patel and Shelby A. Jordan (Plaintiffs for purposes of all Texas Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1195. Plaintiffs bring this Count on behalf of the Texas Subclass.

1196. Plaintiffs and the Texas Subclass are individuals, partnerships and corporations with assets of less than \$25 million (or are controlled by corporations or entities with less than \$25 million in assets). *See* TEX. BUS. & COM. CODE § 17.41.

1197. The Texas Deceptive Trade Practices-Consumer Protection Act ("Texas DTPA") provides a private right of action to a consumer where the consumer suffers economic damage as the result of either (i) the use of false, misleading or deceptive act or practice specifically enumerated in TEX. BUS. & COM. CODE § 17.46(b); or (ii) "an unconscionable action or course of action by any person." TEX. BUS. & COM. CODE § 17.50(a)(2) & (3). The Texas DTPA declares several specific actions to be unlawful, including: "(5) Representing that goods or services have

sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,” and (9) advertising goods or services with intent not to sell them as advertised.” An “unconscionable action or course of action,” means “an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.” TEX. BUS. & COM. CODE § 17.45(5). As detailed herein, Mercedes has engaged in an unconscionable action or course of action and thereby caused economic damages to the Texas Subclass.

1198. In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in deceptive business practices prohibited by the Texas DTPA, including: representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with intent not to sell them as advertised; and engaging in acts or practices which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

1199. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes’ failure to disclose the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions

controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1200. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

1201. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1202. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1203. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1204. Mercedes knew or should have known that its conduct violated the Texas DTPA.

1205. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1206. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1207. Mercedes’ conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1208. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

1209. Mercedes’ violations present a continuing risk to Plaintiffs as well as to the general public. Mercedes’ unlawful acts and practices complained of herein affect the public interest.

1210. Plaintiffs and the Subclass seek damages and treble damages for Mercedes’ knowing violations.

1211. Plaintiffs gave written notice prior to filing suit as required by TEX. BUS. & COM. CODE § 17.505(a).

COUNT II

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

1212. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1213. Plaintiffs bring this Count on behalf of the Texas Subclass members.

1214. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1215. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to

Mercedes, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1216. As a direct and proximate result of Mercedes' breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUD BY CONCEALMENT (BASED ON TEXAS LAW)

1217. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1218. This claim is brought on behalf of the Texas Subclass.

1219. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1220. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low

emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1221. Mercedes knew these representations were false when made.

1222. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1223. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1224. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-

compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1225. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

1226. Plaintiffs and Subclass members reasonably relied upon Mercedes' deception. They had no way of knowing that Mercedes' representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1227. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1228. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes

well knew, its customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1229. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced*

emissions diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1230. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1231. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1232. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1233. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded

vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1234. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1235. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1236. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Z. Claims Brought on Behalf of the Utah Subclass

COUNT I

**VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT
(UTAH CODE ANN. §§ 13-11-1, *ET SEQ.*)**

1237. Plaintiffs Seid Dilgistic and Tiffany Knight (Plaintiffs for purposes of all Utah Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

1238. Plaintiffs bring this Count on behalf of the Utah Subclass.

1239. Mercedes is a “supplier” under the Utah Consumer Sales Practices Act (“Utah CSPA”), UTAH CODE ANN. § 13-11-3.

1240. Plaintiffs and the Subclass members are “persons” under UTAH CODE ANN. § 13-11-3.

1241. Sales of the Affected Vehicles to Plaintiffs and the Subclass were “consumer transactions” within the meaning of UTAH CODE ANN. § 13-11-3.

1242. The Utah CSPA makes unlawful any “deceptive act or practice by a supplier in connection with a consumer transaction” under UTAH CODE ANN. § 13-11-4. Specifically, “a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not” or “(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not.” UTAH CODE ANN. § 13-11-4. “An unconscionable act or practice by a supplier in connection with a consumer transaction” also violates the Utah CSPA. UTAH CODE ANN. § 13-11-5. In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered

vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in conduct prohibited by the Utah CSPA, including, among other things, engaging in unconscionable acts, representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; and representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not. Mercedes also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

1243. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1244. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

1245. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1246. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1247. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1248. Mercedes knew or should have known that its conduct violated the Utah CSPA.

1249. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1250. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1251. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1252. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

1253. Mercedes' violations present a continuing risk to Plaintiffs as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

1254. Pursuant to UTAH CODE ANN. § 13-11-4, Plaintiffs and the Subclass seek monetary relief against Mercedes measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$2,000 for each Plaintiff and each Utah Class member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

COUNT II

BREACH OF CONTRACT (BASED ON UTAH LAW)

1255. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1256. Plaintiffs bring this Count on behalf of the Utah Subclass members.

1257. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those

misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1258. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1259. As a direct and proximate result of Mercedes' breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON UTAH LAW)

1260. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1261. This claim is brought on behalf of the Utah Subclass.

1262. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1263. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1264. Mercedes knew these representations were false when made.

1265. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1266. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate

than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1267. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1268. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

1269. Plaintiffs and Subclass members reasonably relied upon Mercedes' deception. They had no way of knowing that Mercedes' representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1270. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1271. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1272. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its

vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1273. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1274. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1275. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions

diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1276. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1277. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1278. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1279. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

AA. Claims Brought on Behalf of the Virginia Subclass

COUNT I

**VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT
(VA. CODE ANN. §§ 59.1-196, *ET SEQ.*)**

1280. Plaintiffs Ulyana Lynevyeh and Darrell Feller (Plaintiffs for purposes of all Virginia Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

1281. This claim is brought on behalf of the Virginia Subclass.

1282. Mercedes is a "person" as defined by VA. CODE ANN. § 59.1-198. The transactions between Plaintiffs and the other Subclass members on the one hand and Mercedes on the other, leading to the purchase or lease of the Affected Vehicles by Plaintiffs and the other Subclass members, are "consumer transactions" as defined by VA. CODE ANN. § 59.1-198, because the Affected Vehicles were purchased or leased primarily for personal, family or household purposes.

1283. The Virginia Consumer Protection Act (Virginia CPA) prohibits "...(5) misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade,

style, or model; ... (8) advertising goods or services with intent not to sell them as advertised ...; [and] (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction[.]” VA. CODE ANN. § 59.1-200(A). In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in acts and practices violating VA. CODE ANN. § 59.1-200(A), including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in deception, fraud, false pretense, false promise or misrepresentations and conduct likely to deceive.

1284. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes’ failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1285. Plaintiffs and Subclass members reasonably relied upon Mercedes’ false misrepresentations. They had no way of knowing that Mercedes’ representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of

deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

1286. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1287. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1288. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1289. Mercedes knew or should have known that its conduct violated the Virginia CPA.

1290. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1291. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass

members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1292. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1293. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes' conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes' misrepresentations and omissions.

1294. Mercedes' violations present a continuing risk to Plaintiffs as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

1295. Pursuant to VA. CODE ANN. § 59.1-204, Plaintiffs and the Subclass seek monetary relief against Mercedes measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$500 for each Plaintiff and each Subclass member. Because Mercedes' conduct was committed willfully and knowingly, Plaintiffs are entitled to recover, for each Plaintiff and each Subclass member, the greater of (a) three times actual damages or (b) \$1,000.

1296. Plaintiffs also seek punitive damages, and attorneys' fees, and any other just and proper relief available under General Business Law § 59.1-204, *et seq.*

COUNT II

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

1297. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1298. Plaintiffs bring this Count on behalf of Virginia Subclass members.

1299. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1300. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to

Mercedes, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1301. As a direct and proximate result of Mercedes' breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUD BY CONCEALMENT (UNDER VIRGINIA LAW)

1302. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1303. This claim is brought on behalf of the Virginia Subclass.

1304. Mercedes intentionally concealed that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NO_x, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1305. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1306. Mercedes knew these representations were false when made.

1307. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1308. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1309. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1310. The truth about the defective emissions controls and Mercedes' manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

1311. Plaintiffs and Subclass members reasonably relied upon Mercedes' deception. They had no way of knowing that Mercedes' representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1312. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1313. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiffs and Subclass members, highly valued that the

vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1314. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1315. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1316. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1317. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1318. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles,

and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1319. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1320. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1321. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

BB. Claims Brought on Behalf of the Washington Subclass

COUNT I

**VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT
(WASH. REV. CODE ANN. §§ 19.86.010, *ET SEQ.*)**

1322. Plaintiffs Michael Medler and Randolph Rolle (Plaintiffs for purposes of all Washington Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1323. Plaintiffs bring this Count on behalf of the Washington Subclass.

1324. Mercedes, Plaintiffs, and the Washington Subclass are a “person” under WASH. REV. CODE ANN. § 19.86.010(1) (“Washington CPA”).

1325. Mercedes engaged in “trade” or “commerce” under WASH. REV. CODE ANN. § 19.86.010(2).

1326. The Washington Consumer Protection Act (“Washington CPA”) broadly prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” WASH. REV. CODE. WASH. ANN. § 19.96.010. In the course of Mercedes’ business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes’ advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in unfair and deceptive business practices prohibited by the Washington CPA. Mercedes’ conduct was unfair because it (1) offends public policy as it has been established by statutes, the common law, or otherwise; (2) is immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury

to consumers. Mercedes' conduct is deceptive because it has the capacity or tendency to deceive.

1327. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1328. Plaintiffs and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiffs and Subclass members did not, and could not, unravel Mercedes' deception on their own.

1329. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1330. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1331. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1332. Mercedes knew or should have known that its conduct violated the Washington CPA.

1333. Mercedes owed Plaintiffs and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiffs and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiffs and the Subclass that contradicted these representations.

1334. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1335. Mercedes’ conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1336. Plaintiffs and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

1337. Mercedes' violations present a continuing risk to Plaintiffs as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest.

1338. Mercedes is liable to Plaintiffs and the Subclass for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages, as well as any other remedies the Court may deem appropriate under WASH. REV. CODE. ANN. § 19.86.090.

COUNT II

BREACH OF CONTRACT (BASED ON WASHINGTON LAW)

1339. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1340. Plaintiffs bring this Count on behalf of the Washington Subclass members.

1341. Mercedes' misrepresentations and omissions alleged herein, including Mercedes' failure to disclose the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls as alleged herein, caused Plaintiffs and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Subclass members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiffs and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1342. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by selling or leasing to Plaintiffs and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and the existence of the BlueTEC Clean Diesel engine system's defect and/or defective design of emissions controls, including information known to Mercedes, rendering each Affected Vehicle non-EPA-compliant, and thus less valuable than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1343. As a direct and proximate result of Mercedes' breach of contract, Plaintiffs and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON WASHINGTON LAW)

1344. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1345. This claim is brought on behalf of the Washington Subclass.

1346. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the

truth, and denied Plaintiffs and the other Subclass members information that is highly relevant to their purchasing decision.

1347. Mercedes further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1348. Mercedes knew these representations were false when made.

1349. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1350. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1351. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to

disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1352. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiffs and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiffs and Subclass members.

1353. Plaintiffs and Subclass members reasonably relied upon Mercedes’ deception. They had no way of knowing that Mercedes’ representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes’ deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1354. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1355. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiffs and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1356. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiffs or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the

truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiffs and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1357. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1358. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1359. Plaintiffs and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Subclass members.

1360. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they own vehicles that are diminished in

value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiffs and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1361. The value of Plaintiffs' and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiffs' and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1362. Accordingly, Mercedes is liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

CC. Claims Brought on Behalf of the West Virginia Subclass

COUNT I

**VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT
(W. VA. CODE §§ 46A-1-101, *ET SEQ.*)**

1363. Plaintiff James Edwards (Plaintiff for purposes of all West Virginia Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

1364. Plaintiff brings this Count on behalf of the West Virginia Subclass.

1365. Mercedes is a “person” under W. VA. CODE § 46A-1-102(31).

1366. Plaintiff and the West Virginia Subclass are “consumers,” as defined by W. VA. CODE §§ and 46A-1-102(12) and 46A-6-102(2), who purchased or leased one or more Affected Vehicles.

1367. Mercedes engaged in trade or commerce as defined by W. VA. CODE § 46A-6-102(6).

1368. The West Virginia Consumer Credit and Protection Act (“West Virginia CCPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” W. VA. CODE § 46A-6-104. Without limitation, “unfair or deceptive” acts or practices include:

(E) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(G) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another;

(I) Advertising goods or services with intent not to sell them as advertised;

(L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the

extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

W. VA. CODE § 46A-6-102(7). In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Mercedes engaged in deceptive business practices prohibited by the West Virginia CCPA, including: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; (3) advertising the Affected Vehicles with the intent not to sell them as advertised; (4) engaging in other conduct which similarly creates a likelihood of confusion or of misunderstanding; (5) employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles; and (6) advertising using false, misleading, or deceptive representations that omitted material information necessary to make the statements not false, misleading or deceptive.

1369. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions

controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1370. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

1371. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1372. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1373. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1374. Mercedes knew or should have known that its conduct violated the West Virginia CCPA.

1375. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1376. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1377. Mercedes’ conduct proximately caused injuries to Plaintiff and the other Subclass members.

1378. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

1379. Mercedes’ violations present a continuing risk to Plaintiff as well as to the general public. Mercedes’ unlawful acts and practices complained of herein affect the public interest.

1380. Pursuant to W. VA. CODE § 46A-6-106, Plaintiff seeks monetary relief against Mercedes measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$200 per violation of the West Virginia CCPA for each Plaintiff and each member of the West Virginia Subclass.

1381. Plaintiff also seeks punitive damages against Mercedes because Mercedes carried out despicable conduct with willful and conscious disregard of the rights of others, subjecting Plaintiff to cruel and unjust hardship as a result. Mercedes' unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

1382. Plaintiff further seeks restitution, punitive damages, costs of Court, attorney's fees under W. VA. CODE § 46A-5-101, *et seq.*, and any other just and proper relief available under the West Virginia CCPA.

1383. On March 28, 2016, Plaintiff sent a letter complying with W. VA. CODE § 46A-6-106(b). Because Mercedes failed to remedy its unlawful conduct within the requisite time period, Plaintiffs seek all damages and relief to which Plaintiffs and the West Virginia Class are entitled.

COUNT II

BREACH OF CONTRACT (BASED ON WEST VIRGINIA LAW)

1384. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1385. Plaintiff brings this Count on behalf of the West Virginia Subclass.

1386. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive

alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1387. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1388. As a direct and proximate result of Mercedes' breach of contract, Plaintiff and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT

(BASED ON WEST VIRGINIA LAW)

1389. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1390. This claim is brought on behalf of the West Virginia Subclass.

1391. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes'

advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1392. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1393. Mercedes knew these representations were false when made.

1394. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1395. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1396. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1397. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

1398. Plaintiff and Subclass members reasonably relied upon Mercedes’ deception. They had no way of knowing that Mercedes’ representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes’ deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1399. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that

Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1400. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1401. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were

material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1402. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1403. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1404. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was

in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

1405. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1406. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1407. Accordingly, Mercedes is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1408. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

DD. Claims Brought on Behalf of the Wisconsin Subclass

COUNT I

**VIOLATIONS OF THE WISCONSIN
DECEPTIVE TRADE PRACTICES ACT
(WIS. STAT. § 110.18)**

1409. Plaintiff Lars Dannberg (Plaintiff for purposes of all Wisconsin Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1410. Plaintiff brings this claim on behalf of the Wisconsin Subclass.

1411. Mercedes is a "person, firm, corporation or association" within the meaning of WIS. STAT. § 100.18(1).

1412. Plaintiff and Wisconsin Subclass members are members of "the public" within the meaning of WIS. STAT. § 100.18(1). Plaintiff and Wisconsin Subclass members purchased or leased one or more Affected Vehicles.

1413. The Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA") prohibits a "representation or statement of fact which is untrue, deceptive or misleading." WIS. STAT. § 100.18(1). In the course of Mercedes' business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Mercedes' advertising campaign, and that the Affected Vehicles emitted

unlawfully high levels of pollutants, including NO_x, as described above. Accordingly, Mercedes engaged in deceptive business practices prohibited by the Wisconsin DTPA.

1414. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Mercedes' failure to disclose that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NO_x, as described above.

1415. Plaintiff and Subclass members reasonably relied upon Mercedes' false misrepresentations. They had no way of knowing that Mercedes' representations were false and gravely misleading. As alleged herein, Mercedes engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Mercedes' deception on their own.

1416. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1417. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1418. Mercedes intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1419. Mercedes knew or should have known that its conduct violated the Wisconsin DTPA.

1420. Mercedes owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Mercedes:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1421. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a “Defeat Device,” emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes’ material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1422. Mercedes’ conduct proximately caused injuries to Plaintiff and the other Subclass members.

1423. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Mercedes’ conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Mercedes’ misrepresentations and omissions.

1424. Mercedes’ violations present a continuing risk to Plaintiff as well as to the general public. Mercedes’ unlawful acts and practices complained of herein affect the public interest.

1425. Plaintiff and the Wisconsin Subclass are entitled to damages and other relief provided for under WIS. STAT. § 100.18(11)(b)(2). Because Mercedes' conduct was committed knowingly and/or intentionally, Plaintiff and the Wisconsin Subclass are entitled to treble damages.

1426. Plaintiff and the Wisconsin Subclass also seek court costs and attorneys' fees under WIS. STAT. § 110.18(11)(b)(2).

COUNT II

BREACH OF CONTRACT (BASED ON WISCONSIN LAW)

1427. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1428. Plaintiff brings this Count on behalf of the Wisconsin Subclass members.

1429. Mercedes' misrepresentations and omissions alleged herein, including, but not limited to, Mercedes' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions 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 purchased or leased these Affected Vehicles, would not have purchased or leased these Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the defective BlueTEC Clean Diesel engine system and which were not marketed as including such a system. Accordingly, Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

1430. Each and every sale or lease of an Affected Vehicle constitutes a contract between Mercedes and the purchaser or lessee. Mercedes breached these contracts by, among other things, selling or leasing to Plaintiff and the other Subclass members defective Affected Vehicles and by misrepresenting or failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, thus rendering each Affected Vehicle less valuable, than vehicles not equipped with the defective BlueTEC Clean Diesel engine system.

1431. As a direct and proximate result of Mercedes' breach of contract, Plaintiff and the Subclass have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON WISCONSIN LAW)

1432. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1433. This claim is brought on behalf of the Wisconsin Subclass.

1434. Mercedes intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Mercedes' advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Mercedes acted with reckless disregard for the

truth, and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1435. Mercedes further affirmatively misrepresented to Plaintiff in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1436. Mercedes knew these representations were false when made.

1437. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Mercedes' advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1438. Mercedes had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1439. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. Mercedes disclosed certain details about the BlueTEC Clean Diesel engine, but nonetheless, Mercedes intentionally failed to

disclose the important facts that the NO_x reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a “Defeat Device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1440. The truth about the defective emissions controls and Mercedes’ manipulations of those controls, unlawfully high emissions, the “Defeat Device,” and non-compliance with EPA emissions requirements was known only to Mercedes; Plaintiff and the Subclass members did not know of these facts and Mercedes actively concealed these facts from Plaintiff and Subclass members.

1441. Plaintiff and Subclass members reasonably relied upon Mercedes’ deception. They had no way of knowing that Mercedes’ representations were false and/or misleading. As consumers, Plaintiff and Subclass members did not, and could not, unravel Mercedes’ deception on their own. Rather, Mercedes intended to deceive Plaintiff and Subclass members by concealing the true facts about the Affected Vehicle emissions.

1442. Mercedes also concealed and suppressed material facts concerning what is evidently the true culture of Mercedes—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. It also emphasized profits and sales above the trust that Plaintiff and Subclass members placed in its representations. Consumers buy diesel cars from Mercedes because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1443. Mercedes' false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Mercedes well knew, its customers, including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1444. Mercedes had a duty to disclose the emissions defect, defective design of emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to Mercedes, because Mercedes had exclusive knowledge as to such facts, and because Mercedes knew these facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Mercedes also had a duty to disclose because it made general affirmative representations about the qualities of its vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each country, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff and Subclass members, Mercedes had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the

truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Mercedes represented to Plaintiff and Subclass members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1445. Mercedes actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1446. Mercedes has still not made full and adequate disclosures, and continues to defraud Plaintiff and Subclass members by concealing material information regarding the emissions qualities of its referenced vehicles.

1447. Plaintiff and Subclass members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel cars manufactured by Mercedes, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff's and Subclass members' actions were justified. Mercedes was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass members.

1448. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they own vehicles that are diminished in value as a

result of Mercedes' concealment of the true quality and quantity of those vehicles' emissions and Mercedes' failure to timely disclose the defect or defective design of the BlueTEC Clean Diesel engine system, the actual emissions qualities and quantities of Mercedes-branded vehicles, and the serious issues engendered by Mercedes' corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiff and Subclass members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1449. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Mercedes' fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the Mercedes brand name attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1450. Accordingly, Mercedes is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1451. Mercedes' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Mercedes made to them, in order to enrich Mercedes. Mercedes' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide Class and State Subclasses, respectfully request that the Court enter judgment in their favor and against Mercedes, as follows:

A. Certification of the proposed Nationwide Class and State Subclasses, including appointment of Plaintiffs' counsel as Class Counsel;

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

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

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

E. An award of costs and attorneys' fees; and

F. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

DATED: May 6, 2016

Respectfully submitted,

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