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

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DAVID I. ASHCRAFT, JIMMY BIRD, KEITH
CANIERO, ANTHONY CAPUTO, STEPHEN
CARROLL, GEOFFREY C. CUNNINGHAM,
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Civil Action No. 2:16-cv-0881

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

ADRIAN CLIVE ROBERTS, RANDOLPH
ROLLE, ANDREW H. RUBEY, JORGE
SALVADOR SERVIN, JAMES SCHAFER,
JANICE SHEEHY, HENRY SILVERIO,
BRADFORD SMITH, CRAIG THORSON,
ROBERT TREPPER, LORRIE VIDAL,
DEDRICK WATKINS, THOMAS WEISS,
CHARLES WOLFORD, RICHARD YANUS,
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, ROBERT BOSCH LLC, a
Delaware Limited Liability Company, and
ROBERT BOSCH GMBH, a foreign corporation,

Defendants.

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Plaintiffs Susan Albers, Gwendolyn Andary, David I. Ashcraft, Jimmy Bird, Keith Caniero, Anthony Caputo, Stephen Carroll, Geoffrey C. Cunningham, Lars Dannberg, Arthur Daschke, Andrew Deutsch, Seid Dilgistic, Wendell Dingle, Devin Downs, James Edwards, Darrell Feller, Jeff Findlay, Billy Fox, Jr., Gustavo Fraga-Errecart, Terrence Garmey, Christopher Gates, Keith Hall, Bobby Hamilton, Freddie T. Holbrook, Shelby A. Jordan, Tiffany Knight, Zbigniew Kurzawa, John Laurino, Caroline A. Ledlie, Walter Louis, Jr., John Lingua, Ulyana Lynevyeh, Michael Medler, Maryana Melnyk, Vincent Minerva, Scott Morgan, Jonathan Mose, A. Eric Ngwashi, Chandrakant Patel, Shelia Reed, Catherine Roberts, Dr. Adrian Clive Roberts, Randolph Rolle, Andrew H. Rubey, Jorge Salvador Servin, James Schafer, Janice Sheehy, Henry Silverio, Bradford Smith, Craig Thorson, Robert Trepper, Lorrie Vidal, Dedrick Watkins, Thomas Weiss, Charles Wolford, Richard Yanus, 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 made by the “Bosch defendants”¹ that turns off emissions controls when the vehicles are not being tested, reports and vehicle testing by Plaintiffs and others indicate that Mercedes-Benz USA, LLC’s and Daimler AG’s (collectively, “Mercedes”) so called BlueTEC “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 by Plaintiffs on Mercedes vehicles certified as compliant in the United States has recently revealed that these vehicles emit dangerous oxides of nitrogen (NOx) at levels *many*

¹ Bosch Defendants are Robert Bosch LLC and Robert Bosch GmbH.

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 and control emissions in diesel vehicles. 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 NOx into less harmful substances, such as nitrogen and oxygen.

5. Mercedes understood the materiality to consumers of a “clean car message.” Thus, Mercedes aggressively and consistently markets its BlueTEC vehicles across all media 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. The BlueTEC Clean Diesel is a lie. Just like its Volkswagen counterparts, the claims, representations, and marketing concerning the environmental characteristics of the BlueTEC Clean Diesel are materially false and misleading in that they all rely upon the suppression and concealment of critical material facts about the operation and true environmental characteristics of the BlueTEC Clean Diesel. Among other critical, material suppressed facts, which were not revealed to consumers, is that Mercedes has programmed its BlueTEC vehicles to turn off or otherwise limit the effectiveness of the emission reduction systems during real-world driving. As a consequence of this critical concealed material fact, consumers are unaware

that—contrary to the clean diesel message transmitted in a uniform and consistent way by Mercedes—the Affected Vehicles are not clean diesels and, to the contrary, emit enormous amounts of NOx pollutants into the atmosphere.

8. Mercedes recently admitted, in response to this litigation, 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 by Plaintiffs on American certified vehicles 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, contrary to its admissions and to what it represents to the public, the Mercedes emissions “shut off device” goes well beyond when the temperature drops below 50 degrees Fahrenheit. Testing by Plaintiffs 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. As noted, this critical material fact has been intentionally concealed and hidden from the consuming public at the same time that Mercedes has touted the vehicles as “clean,” earth friendly, and compliant with all relevant 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. Mercedes and its partner Bosch are well aware of what a defeat device is and that the use of a defeat device is prohibited by law except in very limited circumstances that do not apply here. 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.” Mercedes has concealed its manipulations from Plaintiffs and the public.

13. Mercedes did not act alone. At the heart of the diesel scandal in the United States and Europe are Bosch GmbH and Bosch LLC (together, “Bosch”). Bosch was an active and knowing participant in the scheme to evade U.S. emissions requirements. In vehicles manufactured by Volkswagen, Mercedes and Fiat Chrysler America, Bosch manufactured, tested, and distributed the engine control unit that allowed Mercedes to implement the defeat

device. Absent Bosch's active cooperation in the development of the ECU and its constituent software, the fraud perpetrated by Mercedes would not have been possible.

14. 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). As explained below, Plaintiffs testing of certain models, based on the similarity of engine design and the common Bosch software, is sufficient to plausibly allege that all Mercedes diesels named herein exceed U.S. and state emissions standards and exceed the levels a reasonable consumer would expect. It is equally true that in all cases Mercedes concealed from consumers the use of the illegal defeat device.

15. 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. It is readily apparent that, based on (among other things) Mercedes' marketing of the Affected Vehicles as clean diesels, these concealed facts and omissions would have been material to a reasonable consumer.

16. 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

17. 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 because at least one member of the proposed Class is a citizen of a State other than that of one of the Defendants. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

III. VENUE

18. 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

19. 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, loss of the benefit of the bargain, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle.

20. Neither Mercedes nor any of its agents, dealers, or other representatives informed Plaintiffs 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 Plaintiffs

21. 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. Plaintiff originally planned to buy a Mercedes ML 350 with a gasoline engine, but purchased the BlueTEC model after the salesperson at Mercedes of Caldwell represented to him that the BlueTEC “runs clean” and the Mercedes ML 350 with BlueTEC technology would last much longer than the gasoline engine. 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 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.

22. Plaintiff KEITH CANIERO (for the purpose of this paragraph, “Plaintiff”) is a citizen of New Jersey domiciled in Colts Neck, New Jersey. In December 2012, Plaintiff purchased a new 2012 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Contemporary Motors, an authorized Mercedes dealer in Little Silver, 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”, 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 Plaintiffs

23. 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 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, 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.

24. Plaintiff WALTER LOUIS, JR. (for the purpose of this paragraph, “Plaintiff”) is a citizen of Louisiana domiciled in Lafayette, Louisiana. In April 2013, Plaintiff purchased a used 2012 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”),

from McConnell Honda in Montgomery, 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 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 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.

3. Arizona Plaintiff

25. 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 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 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 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 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

26. 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. Plaintiff researched the Mercedes BlueTEC Sprinter on Mercedes’ website and saw that Mercedes BlueTEC vehicles were described as “the world’s most advanced diesels” with “ultra-low emissions, high fuel economy, and responsive performance.” 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.

27. 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. In 2011, Plaintiff visited the Mercedes factory in Sindelfingen, Germany before leasing her first BlueTEC vehicle. The Mercedes’ representatives at the factory in Germany and at the dealership in California described the BlueTEC as a “clean” diesel and explained to Plaintiff

that the AdBlue diesel exhaust fluid cleaned the diesel emissions so the emissions are the same as if the vehicle was burning water instead of diesel fuel. This information was repeated again by the salesperson at the Mercedes dealership in California when Plaintiff purchased her 2013 Mercedes GLK. On each occasion, Plaintiff was promised clean emissions and fuel economy with the BlueTEC technology. Plaintiff also reviewed multiple brochures from the Mercedes dealership which discussed the environmental benefits of driving a Mercedes BlueTEC. She also viewed Mercedes commercials on television and website ads. Plaintiff believes she also visited the Mercedes website on more than one occasion between April 2013 and July 2013 and remembers BlueTEC being prominently featured on the website and reading something about a “green generation of Mercedes,” and “a new wave of environmentally friendly 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 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.

28. 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. Plaintiff conducted extensive online research before selecting the Mercedes ML320 BlueTEC and read that the BlueTEC was a clean burning diesel with excellent gas mileage. The dealer confirmed these claims in conversations during negotiations prior to Plaintiff’s purchase of his 2009 Mercedes ML320 BlueTEC. 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 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.

29. 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. Plaintiff researched the BlueTEC Clean Diesel on the Internet and on the Mercedes website and recalls reading that BlueTEC models are “simply the world’s most advanced diesels,” with “ultra-low emissions, high fuel economy and responsive performance.” 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, 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.

30. Plaintiff JORGE SALVADOR SERVIN (for the purpose of this paragraph, “Plaintiff”) is a citizen of California domiciled in Lake Elsinore, California. On or about February 2016, Plaintiff purchased a used 2007 Mercedes E320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Car Show Dealership in Corona, 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 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 E 320 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,” complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life. 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 relating to the unlawfully high emissions 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 320 actually emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

5. Colorado Plaintiffs

31. 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. Plaintiff’s belief that the Mercedes BlueTEC Clean Diesel was indeed a clean diesel was pivotal to his purchase. In 2014, Plaintiff conducted web research into diesel engines in RVs and reviewed online articles about the BlueTEC Clean Diesel, including “How Mercedes-Benz BLUETEC Works” (at http://cars.about.com/od/thingsyouneedtoknow/a/ag_BLUETEC.htm), “BlueTEC Clean Diesel Technology” (at <http://alternativefuels.about.com/od/researchdevelopment/a/bluetec.htm>); “Mercedes-Benz 3.0 V6 Diesel” (at <http://ae-plus.com/features/mercedes-benz-30-v6-diesel/page:1>); and “The New V6 Diesel Engine from Mercedes-Benz” (at <http://www.whnet.com/4x4/diesel.html>). The latter article convinced Plaintiff that Mercedes was committed to a “green” philosophy and emission reduction and sold him on the OM642LS engine package which appeared in 2010 models of the Sprinter. He was convinced by the data that the OM642LS engine with the BlueTEC/AdBlue urea injection system was the cleanest diesel package available. 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 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.

32. Plaintiff SUSAN ALBERS (for the purpose of this paragraph, “Plaintiff”) is a citizen of Colorado domiciled in Oak Creek, Colorado. On or about June 29, 2013, Plaintiff purchased a new 2013 Mercedes GL350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes-Benz of Littleton, an authorized Mercedes dealer, in Littleton, Colorado. 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. Plaintiff traded in the Affected Vehicle at a loss earlier this year because of problems related to the Blue Tec technology. In addition, related to the BlueTEC emissions system, the check engine light in the Affected Vehicle came on and stayed on throughout the winter every winter. The Mercedes Benz service department in Westminster told Plaintiff the problem could not be fixed. Mercedes’ unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the GL350 without proper emission controls has caused Plaintiff out-of-pocket loss 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 GL350 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

33. 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. In making his purchase decision, Plaintiff relied on Mercedes literature that promoted “clean” diesel. 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 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 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

34. 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. In discussing the potential purchase with the dealer, the salesperson described the BlueTEC Clean Diesel to Plaintiff as “Eco-friendly” and the “most clean-burning diesel vehicle

on the road.” 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 Plaintiffs

35. 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.

36. Plaintiff STEPHEN CARROLL (for the purpose of this paragraph, “Plaintiff”) is a citizen of Florida domiciled in Sarasota, Florida. In April 2013, Plaintiff purchased a new 2013 Mercedes GLK 250 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes of Tampa in Tampa, 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 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 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, 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.

37. Plaintiff GEOFFREY C. CUNNINGHAM (for the purpose of this paragraph, “Plaintiff”) is a citizen of Florida domiciled in South Daytona, Florida. In October 2008, Plaintiff purchased a new 2008 Mercedes E320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Daytona Beach Mercedes-Benz in Daytona 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 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.

9. Georgia Plaintiffs

38. 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. Plaintiff researched the Mercedes BlueTEC emissions system by reading articles in Consumer Reports, Cars.com, and Edmunds.com. He specifically recalls reading that

the AdBlue additive controlled pollution and made the BlueTEC vehicles run as clean as a vehicle with a gasoline engine. 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 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.

39. 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. The salespeople at Mercedes of Columbus, Gary St. Louis and Debi Lewis, represented to Plaintiff that the BlueTEC engine is the “cleanest diesel” engine. Plaintiff also recalls discussing expected performance, durability, and fuel economy with the salespeople at the Mercedes dealership. Although Plaintiff purchased his 2012 Mercedes E350 BlueTEC used, the window sticker on the vehicle indicated the vehicle had a “Global Warming Score” that was above average for a new vehicle and a “Smog Score” that was average for a new 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

40. 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. Plaintiff spent several months doing research prior to purchasing his 2015 Mercedes Sprinter BlueTEC Clean Diesel. He discussed the exhaust emissions of Sprinter vehicles with BlueTEC technology with a Mercedes salesperson at Mercedes Seattle, and Tom McCabe at the Lyle Pearson Auto Show in Boise, Idaho. He recalls generally discussing expected performance, durability and fuel economy with both sales people. Plaintiff specifically remembers being told by Mr. Morgan that the BlueTEC engine was better than a gasoline engine because it was a cleaner running engine

with lower emissions and better gas mileage. In addition, Plaintiff researched the Mercedes BlueTEC Sprinter motorhome chassis on the Internet. He reviewed electronic advertisements on the Mercedes Sprinter website and the Winnebago website and specifically recalls that the Mercedes website specifically discussed emissions for the BlueTEC Clean Diesel Sprinter. 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

41. 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. Plaintiff conducted extensive internet research into the BlueTEC Clean Diesel technology before she purchased her 2012 Mercedes S350 BlueTEC. She also discussed Mercedes BlueTEC exhaust emissions with the salesperson at Mercedes-Benz of Chicago. The salesperson told her that even though the 2012 Mercedes S350 BlueTEC she was interested in purchasing was used, the emissions would be like new and very clean because of the BlueTEC technology. 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. Indiana Plaintiffs

42. Plaintiff JEFF FINDLAY (for the purpose of this paragraph, “Plaintiff”) is a citizen of Indiana domiciled in Lafayette, Indiana. In August 2015, Plaintiff purchased a used 2011 Mercedes Sprinter 3500 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Paul Richard GM Center in Peru, Indiana. 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 3500 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 3500 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.

43. Plaintiff ANDREW H. RUBEY (for the purpose of this paragraph, “Plaintiff”) is a citizen of Indiana domiciled in Carmel, Indiana. In January 2014, Plaintiff purchased a used 2007 Mercedes E 320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from

Carmel Motors in Carmel, Indiana. 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 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 E 320 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," complied with United States emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life. 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 relating to the unlawfully high emissions 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 320 actually emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have paid less for it.

13. Kentucky Plaintiff

44. 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. Prior to purchasing the 2007 E320 BlueTEC, Plaintiff reviewed marketing and advertising by Mercedes that promised fuel efficiency and ultra-low emissions in its BlueTEC models. When he visited Tafel Motors in Louisville, Kentucky, the salesperson at the dealership represented to Plaintiff that Mercedes BlueTEC vehicles achieve better mileage and have much lower emissions than previous Mercedes diesel engines. 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.

14. Maryland Plaintiffs

45. 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. Plaintiff conducted extensive research into Mercedes BlueTEC technology prior to purchasing his BlueTEC vehicles from EuroMotorcars in Germantown, Maryland. He travelled to the Mercedes-Benz headquarters in Stuttgart, Germany to test-drive all the BlueTEC models there. He was assured by Mercedes-Benz representatives that the new BlueTEC technology minimized emissions and the environmental impact and was “years away” from the old Mercedes diesel vehicles. He also recalls discussing expected performance, durability, and fuel economy with the Mercedes representative. Unknown to Plaintiff, at the time the vehicles were purchased, they were 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.

46. 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. In making the purchase, Plaintiff relied in general on written and oral communications that indicated that BlueTEC was an effective way to reduce emissions. Plaintiff also recalls conversations with a salesman at EuroMotorcars, the dealership where he purchased his vehicle, in which Plaintiff asked about the emissions of the Mercedes BlueTEC vehicle he was considering purchasing. The salesman represented to Plaintiff that the BlueTEC engines were fuel efficient and that the emissions technology employed in these vehicles was top of the line. Plaintiff understood that BlueTEC was an effective and legal means of complying with U.S. emissions controls. Plaintiff knew he wanted a fuel efficient car and had learned through advertisements that Mercedes’ BlueTEC technology solved the problem of diesel’s high emissions. He researched and compared Mercedes’ “clean diesel” to other competitive eco-friendly cars, relying in part on representations on Mercedes’ website about its BlueTEC emissions technology. He also relied on Mercedes’ representations about how many miles per gallon his vehicle would run, and that the car he purchased complied with EPA regulations. In the absence of such representations, Plaintiff would not have purchased a Mercedes BlueTEC 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.

47. Plaintiff JANICE SHEEHY (for the purpose of this paragraph, “Plaintiff”) is a citizen of Maryland domiciled in Poolesville, Maryland. On or about January 2009, Plaintiff purchased a used 2007 Mercedes E 320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from EuroMotorcars Germantown Mercedes-Benz in Germantown, Maryland. 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 320 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 E 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.

15. Massachusetts Plaintiffs

48. Plaintiff TERRY 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. Plaintiff read a lot of material relating to Mercedes BlueTEC technology, some of it on the Mercedes website, prior to purchasing his 2012 Mercedes S350 BlueTEC. Mercedes’ website described BlueTEC as a “clean diesel” with “ultra-low emissions.” In addition, Plaintiff recalls that Mercedes described BlueTEC technology as clean and fuel efficient in its advertisements and marketing materials. Plaintiff also specifically recalls reviewing the following articles: <https://www.wired.com/2012/04/benz-s350/>, <http://www.thedieseldriver.com/2011/09/2012-mercedes-benz-s350-bluetec-review-and-first-test-drive/>, and <http://www.caranddriver.com/reviews/2012-mercedes-benz-s350-bluetec-diesel-road-test-review>. 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.

49. 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. Plaintiff selected and ultimately purchased his 2010 Mercedes ML350 BlueTEC, 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. 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.

16. Michigan Plaintiff

50. Plaintiff JAMES SCHAFER (for the purpose of this paragraph, "Plaintiff") is a citizen of Michigan domiciled in Grand Rapids, Michigan. On or about October 30, 2013, Plaintiff purchased a used 2012 Mercedes E350 BlueTEC (for the purpose of this paragraph, the "Affected Vehicle"), from Prestige Imports in Grand Rapids, Michigan. 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 E350 Blue TEC 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 Blue TEC 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. Minnesota Plaintiff

51. 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. Plaintiff discussed the 2013 Mercedes ML350 BlueTEC with Glenn Brantley and Christian Even, sales representatives at the Sears Imported Autos, and the manager, Gary Emfield. They each represented to Plaintiff that the Mercedes BlueTEC was a “clean diesel” vehicle. Plaintiff also recalls discussing expected performance, durability, and fuel economy with the sales representatives and manager at Sears Imported Autos. Sears Imported emailed to Plaintiff electronic advertisements for Mercedes BlueTEC models including the ML350. Prior to purchasing the 2013 Mercedes ML 350 BlueTEC, Plaintiff read about the so-called cleanliness of the BlueTEC engine system for the environment and the efficiency and power/performance of the BlueTEC engine system in Edmunds, Car & Driver, and on online forums. He also viewed local advertisements by Mercedes in the Minnesota television market, advertising on Mercedes’ website, and downloaded the electronic brochure for the vehicle from the website and recalls that they specifically discussed emissions. 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.

18. Mississippi Plaintiff

52. Plaintiff DAVID I. ASHCRAFT (for the purpose of this paragraph, “Plaintiff”) is a citizen of Mississippi domiciled in Madison, Mississippi. In June 2013, Plaintiff purchased a new 2013 Mercedes S350 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Higginbotham Automotive in Jackson, Mississippi. 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 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, 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.

19. Missouri Plaintiff

53. 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.

20. Montana Plaintiff

54. 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. Prior to purchasing the vehicle, Plaintiff visited the Mercedes website where he read that Mercedes’ BlueTEC models “are simply the world’s most advanced diesels,” with “ultra-low emissions.” Plaintiff also researched forums and recalls reading about low emissions, performance, durability and fuel economy for the BlueTEC Sprinter chassis. 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.

21. Nevada Plaintiffs

55. 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.

56. 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. Plaintiff researched the Mercedes Sprinter BlueTEC on the Internet and recalls reading about low emissions and “clean” diesel. Plaintiff discussed the exhaust emissions of the Sprinter with the salesperson at Mercedes Benz of Henderson and was told that the Sprinter BlueTEC was “cleaner” than his Toyota Prius which he drove to the

dealership. 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.

22. New York Plaintiffs

57. 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. Plaintiff researched the Mercedes BlueTEC Sprinter motorhome chassis on the Internet. He reviewed electronic advertisements on the Mercedes Sprinter website and the Winnebago website and specifically recalls that the Mercedes website specifically discussed emissions for the BlueTEC Sprinter. Plaintiff discussed the exhaust emissions of diesel vehicles with the salesperson at Camping World RV Sales and was assured that the BlueTEC urea injection system of the Sprinter chassis minimized emissions and environmental impact. This information was later confirmed with statements contained in the online product brochure for the Sprinter Cab Chassis. 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.

58. 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. Plaintiff discussed the low exhaust emissions of BlueTEC Clean Diesel vehicles with the manager (Jeff Bertrant) and sales representative (Michael Torres) at Estate Motors, in addition to discussing expected performance, durability, and fuel economy. Plaintiff also researched Mercedes BlueTEC technology on the Mercedes website and on internet car sites that provide reviews and side-by-side comparisons of vehicles. Mr. Laurino recalls reading positive reviews for Mercedes BlueTEC technology and representations by Mercedes that the ML350 BlueTEC is a “clean” diesel with low emissions. 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.

23. North Carolina Plaintiffs

59. 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 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.

60. 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.

61. Plaintiff ROBERT TREPPER (for the purpose of this paragraph, “Plaintiff”) is a citizen of North Carolina domiciled in Cary, North Carolina. On or about October 14, 2011, Plaintiff purchased a new 2012 Mercedes E350 BlueTEC (for the purpose of this paragraph, one of the “Affected Vehicles”), from Mercedes of Cary, an authorized Mercedes dealership in Cary, North Carolina. On June 11, 2013, Plaintiff purchased a new 2013 Mercedes ML 350 BlueTEC (for the purpose of this paragraph, one of the “Affected Vehicles”), from Mercedes of Cary, an authorized Mercedes dealership in Cary, North Carolina. Plaintiff purchased, and still owns, these vehicles. Unknown to Plaintiff, at the time the Affected Vehicles were purchased, the Affected Vehicles were 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 Affected Vehicles without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicles. 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 the Affected Vehicles on the reasonable, but mistaken, belief that the Affected 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 lives. Plaintiff selected and ultimately purchased the Affected 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 relating to the unlawfully high emissions 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 Affected Vehicles actually emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the Affected Vehicles, or would have paid less for them.

24. Ohio Plaintiff

62. 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. Prior to entering into the lease, Plaintiff discussed the vehicle with the sales representative at the Mercedes dealership. He was debating between a vehicle with a gasoline

engine and one with a diesel engine. The sales person at the Mercedes dealership told Plaintiff that the Mercedes BlueTEC produces far less pollution and gets much better gas mileage than a vehicle with a gasoline engine. These representations were consistent with statements Plaintiff read about BlueTEC technology on the Mercedes' website, which described BlueTEC vehicles as having low emissions, high fuel economy, and great performance. 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 leased 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 leased 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.

25. Pennsylvania Plaintiff

63. 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. The salesperson at Mercedes-Benz of Fort Washington assured Plaintiff that the vehicle was quiet with low emissions. 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.

26. South Carolina Plaintiff

64. Plaintiff CAROLINE A. LEDLIE is a citizen and domiciliary of the State of South Carolina. In August 2011, Plaintiff purchased a Mercedes BlueTEC E350 from an authorized Mercedes dealer in Charleston, South Carolina (for purposes of this paragraph, the “Affected Vehicle.”). 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 E350 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 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.

27. Tennessee Plaintiff

65. 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. The salesperson, Carrie Dugan, presented the BlueTEC as “the holy grail of emissions systems” – combining world-class emissions controls with great fuel economy and responsive performance. The vehicle was sold to Plaintiff as a “Mercedes-Benz Certified Pre-Owned” vehicle and the dealership represented to him that it was one of an “elite” class of vehicles restricted to the best pre-owned vehicles that met an exhaustive list of criteria. The BlueTEC system was heralded as the best-of-the best, world-class diesel emissions system. Plaintiff was told that Mercedes BlueTEC vehicles were such clean diesels, they not

only met current U.S. emissions requirements but the more stringent emission requirements of California and 12-13 other states. Plaintiff was also told that the BlueTEC emissions system was so stellar that the vehicles met not only the current regulations but also a few generations of future emissions regulations/requirements which were even more stringent. Plaintiff also conducted extensive research into Mercedes BlueTEC vehicles prior to his purchase of his 2010 Mercedes BlueTEC R350. He researched BlueTEC technology by reading related information, including, but not limited to, the following sites: KBB.com, Motortrend.com, MBUSA.com, and Wikipedia-BlueTEC. Plaintiff also reviewed information about BlueTEC technology on the Mercedes-Benz website which touted the vehicles' "ultra-low emissions," high fuel economy, and "responsive performance." 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.

28. Texas Plaintiffs

66. Plaintiff 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.

67. 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. Plaintiff spoke to a salesperson at Ed Hicks Imports in Corpus Christi, Texas. He specifically remembers that the salesperson directed him toward the BlueTEC and represented to him that the BlueTEC was the cleanest diesel burning engine manufactured. The salesperson also took out a white paper towel from his pocket and rubbed it on the exhaust to show him no black residue. Plaintiff also reviewed Mercedes promotional materials provided to him by the dealership which discussed low emissions in BlueTEC vehicles and the

environmental impact. Plaintiff visited the Mercedes website to learn more about BlueTEC technology and researched “clean diesel” and BlueTEC on the Internet and read about the environmentally clean and efficient diesel being built by Mercedes. 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.

68. Plaintiff JIMMY BIRD (for the purpose of this paragraph, “Plaintiff”) is a citizen of Texas domiciled in Houston, Texas. In March 2007, Plaintiff purchased a new 2007 Mercedes E320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Mercedes Benz of Houston 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 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 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.

29. Utah Plaintiffs

69. 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 leased 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. Salt Lake City Mercedes-Benz salesperson, Brett Robinson, told Plaintiff that the resale value for the vehicle was better than any other in its class. The Mercedes-Benz salesperson promised Mr. Dilgistic that the vehicle had low emissions, great fuel efficiency and performance. He also told him that the BlueTEC had greater value than its competitors with gasoline engines. Plaintiff extensively researched the vehicle prior to entering into the lease. He read a BBC article about the Mercedes-Benz ML 350 BlueTEC titled, “Is this Mercedes’ Best kept secret?” In addition, he read an article in the New York Times dated March 23, 2013, titled, “A Lower-Cost Filling Solution for the Mercedes-Benz ML350 Bluetec.” He also read a review of the 2013 Mercedes-Benz M-Class in U.S. News and World Report and a Car and Driver review of the 2013 Mercedes-Benz 350 RWD/4Matic. Plaintiff also viewed Mercedes BlueTEC advertisements on KSL, YouTube, Google, and CNN. 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 leased 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 leased 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 leased the vehicle, or would have paid less for it.

70. 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. Plaintiff discussed low emissions, expected performance, durability, and fuel economy with the Mercedes sales people. The salesperson at Mercedes Benz of Lindon gave Plaintiff several brochures and information sheets on the efficiency of Mercedes BlueTEC 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 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.

30. Virginia Plaintiffs

71. 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. Plaintiff conducted extensive research on BlueTEC technology. She picked up product brochures for Mercedes BlueTEC vehicles at a local dealership, visited the Mercedes website and watched YouTube videos on BlueTEC technology. Plaintiff also discussed Mercedes BlueTEC exhaust emissions with the salesperson at Tysinger Motor Co., Chai Gouanglee. The salesperson assured her that the 2014 Mercedes ML350 BlueTEC was clean and efficient with low-emissions and high fuel economy. 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.

72. 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. Plaintiff discussed environmental impact, benefits, cost savings, reliability, ownership costs, future vehicle value of the BlueTEC engine and the difference between a regular gas engine and the BlueTEC diesel engine system with salespeople at Mercedes-Benz in Loveland, Colorado and Mercedes Benz of Tyson Corner. This information was later confirmed with statements contained in the product brochure for the BlueTEC. Plaintiff also researched Mercedes BlueTEC technology in True Car, USAA,

Mercedes' website, Google search, Consumer Reports, KBB and NADA and recalls reading positive reviews. 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.

31. Washington Plaintiffs

73. 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.

74. 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. Plaintiff discussed the exhaust emissions of Mercedes BlueTEC vehicles with the salesperson at Larson Mercedes-Benz, being assured that the Mercedes BlueTEC was a “clean diesel” and that it met the highest tier emissions standards, Tier 4. Plaintiff also visited the Mercedes website several times where he read that Mercedes’ BlueTEC models “are simply the world’s most advanced diesels,” with “ultra-low emissions.” 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.

32. West Virginia Plaintiff

75. 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. Plaintiff remembers that the 2014 Mercedes E250 BlueTEC was advertised as having ultra-low emissions and high fuel economy. 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.

33. Wisconsin Plaintiffs

76. 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. Prior to the purchase of the vehicle, the sales representative at the Mercedes dealership told Plaintiff that the BlueTEC technology provided a “clean” engine system with low emissions and low fuel cost that was better for the environment than a gasoline engine. Plaintiff also read advertisements and brochures, visited the Mercedes website, and saw television ads all touting Mercedes BlueTEC models as having ultra-low emissions, high fuel economy, and zippy performance prior to purchasing 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 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.

77. Plaintiff ZBIGNIEW KURZAWA (for the purpose of this paragraph, “Plaintiff”) is a citizen of Illinois domiciled in Glenview, Illinois. On or about December 2015, Plaintiff purchased a used 2007 Mercedes E320 BlueTEC (for the purpose of this paragraph, the “Affected Vehicle”), from Krueger Auto Mart in Oshkosh, 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 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.

B. Defendants

1. Mercedes-Benz USA, LLC

78. 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.

79. 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

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

81. 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.

82. 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

83. 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.

84. 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.

85. 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.

86. 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.

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

88. 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.

89. Daimler AG owns 100% of the capital share in Mercedes-Benz USA, LLC.²

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

91. 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, Daimler AG says that it will defend itself against U.S. class action emissions lawsuits “with all available legal means.”³

92. 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.

² Daimler AG 2015 Annual Report, Notes to the Consolidated Financial Statement, p. 274.

³ 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>.

3. The Bosch Defendants

93. From at least 2005 to 2015, Robert Bosch GmbH, Robert Bosch LLC and currently unnamed Bosch employees (together, “Bosch”) were knowing and active participants in the creation, development, marketing, and sale of illegal defeat devices specifically designed to evade U.S. emissions requirements in vehicles sold solely in the United States. These vehicles include the Affected Vehicles, as well as diesels made by Volkswagen, Audi, Porsche, and Fiat Chrysler (FCA). Bosch participated not just in the development of the defeat device, but in the scheme to prevent U.S. regulators from uncovering the device’s true functionality. Moreover, Bosch’s participation was not limited to engineering the defeat device (in a collaboration described as unusually close). Rather, Bosch marketed “Clean Diesel” in the United States and lobbied U.S. regulators to approve “Clean Diesel,” another highly unusual activity for a mere supplier. These lobbying efforts, taken together with evidence of Bosch’s actual knowledge that the “akustikfunktion” operated as a defeat device, in Volkswagen vehicles, and participation in concealing the true functionality of the device from U.S. regulators, can be interpreted only one way under U.S. law: Bosch was a knowing and active participant in a massive, decade-long conspiracy with Volkswagen, Mercedes, FCA, and others to defraud U.S. consumers, regulators, and diesel car purchasers or lessees.

94. Robert Bosch GmbH is a German multinational engineering and electronics company headquartered in Gerlingen, Germany. Robert Bosch GmbH is the parent company of Robert Bosch LLC. Robert Bosch GmbH, directly and/or through its North-American subsidiary Robert Bosch LLC, at all material times, designed, manufactured, and supplied elements of the defeat device to Mercedes for use in the Affected Vehicles. Bosch GmbH is subject to the personal jurisdiction of this Court because it has availed itself of the laws of the United States through its management and control over Bosch, LLC, and over the design, development,

manufacture, distribution, testing, and sale of hundreds of thousands of the defeat devices installed in the Affected Vehicles sold or leased in the U.S.

95. Robert Bosch LLC is a Delaware limited liability company with its principal place of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331. Robert Bosch LLC is a wholly-owned subsidiary of Robert Bosch GmbH. Robert Bosch LLC, directly and/or in conjunction with its parent Robert Bosch GmbH, at all material times, designed, manufactured, and supplied elements of the defeat device to Mercedes for use in the Affected Vehicles.

96. Both Robert Bosch GmbH and Robert Bosch LLC operate under the umbrella of the Bosch Group, which encompasses some 340 subsidiaries and companies. The Bosch Group is divided into four business sectors: Mobility Solutions (formerly Automotive Technology), Industrial Technology, Consumer Goods, and Energy and Building Technology. The Mobility Solutions sector, which supplies parts to the automotive industry, and its Diesel Systems division, which develops, manufactures, and supplies diesel systems, are particularly at issue here and include the relevant individuals at both Bosch GmbH and Bosch LLC. Bosch's sectors and divisions are grouped not by location, but by subject matter. Mobility Solutions includes the relevant individuals at both Bosch GmbH and Bosch LLC. Regardless of whether an individual works for Bosch in Germany or the U.S., the individual holds him or herself out as working for Bosch. This collective identity is captured by Bosch's mission statement: "We are Bosch," a unifying principle that links each entity and person within the Bosch Group.⁴

⁴ Bosch 2014 Annual Report, *Experiencing quality of life*, available at http://www.bosch.com/media/com/bosch_group/bosch_in_figures/publications/archive/GB2014_EN.pdf (last accessed November 30, 2016).

V. FACTUAL ALLEGATIONS

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

97. 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.

98. 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.

99. 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.

100. 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.

101. 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).

102. 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.

103. 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 (NOx), which include a variety of nitrogen and oxygen chemical compounds that only form at high temperatures.

104. NOx 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. NOx is produced by the burning of all fossil fuels, but is particularly difficult to control from the burning of diesel fuel. NOx is a toxic pollutant, which produces smog and a litany of environmental and health problems. NOx 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. NOx 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.

105. 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 NO_x 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 NO_x 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 NO_x 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 NO_x 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 NO_x emissions into less harmful, relatively inert, and triple bonded nitrogen gas (N₂) and carbon dioxide (CO₂).

106. Diesel engines thus operate according to this trade-off between price, NO_x, and PM, and for a diesel car to be considered as a “clean” vehicle, it must produce both *low PM 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, 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

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

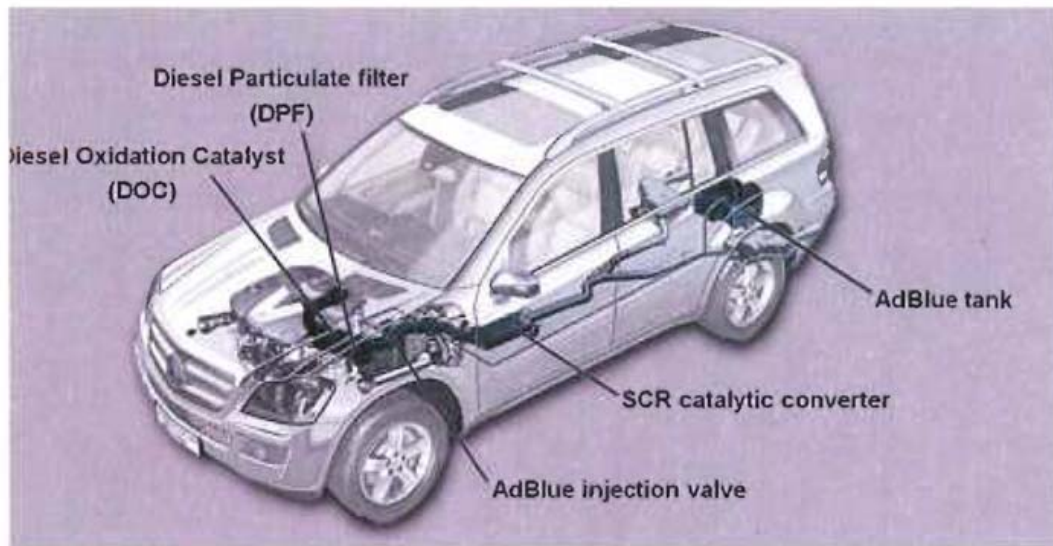
108. Mercedes' response to the challenge has been a diesel engine that it calls the "BlueTEC Clean Diesel."

109. 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 federal and state emission standards.

110. 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.

111. A SCR System is depicted below:

SCR



112. 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 NO_x 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.

113. All of the BlueTEC Clean Diesel engines control emissions as follows: 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 NO_x. In the second step after the exhaust passes through a particulate filter, the

BlueTEC Clean Diesel technology injects ammonia-rich urea into the exhaust in order to convert NOx into less harmful substances, such as nitrogen and oxygen.

114. The BlueTEC Clean Diesel approach, when it is operating, results in cleaner emissions. However, when the foregoing mechanisms are turned off or do not work, the BlueTEC engines are not “Clean Diesels.”

C. The Mercedes Deception by Omission

115. 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”),⁵ scientific literature, reports, and Plaintiffs’ testing indicate that Mercedes’ so-called BlueTEC Clean Diesel vehicles emit far more pollution on the road than in lab tests, far more pollution than gasoline powered vehicles, and cannot be considered “Clean Diesels.” The EPA has widened its probe of auto emissions to include, for example, the Mercedes E250 BlueTEC Clean Diesel.

116. 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 (notwithstanding the fact that 50 degrees Fahrenheit can hardly be considered a dangerously cold temperature).

⁵ 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.

117. So, while the Mercedes diesels with the BlueTEC Clean Diesel 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.

118. Thus, the BlueTEC Clean Diesel is *not* a clean diesel vehicle because, when the ambient temperature falls below 50 degrees, the Affected Vehicles spew excessive unmitigated NOx into the air.

119. Mercedes never disclosed to consumers that Mercedes diesels with BlueTEC Clean Diesel engines may be “clean” diesels when it is warm, but are “dirty” diesels when ambient temperatures are below 50 degrees. And although Mercedes has admitted to a German magazine that no American consumer would see that its BlueTEC Clean Diesel 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 than Mercedes has admitted: 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* as detailed below.

1. European studies and reports.

120. 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.

121. 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.

122. 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 NOx emission level—a level that is less stringent than U.S. limits. TNO Report at 45.

123. TNO further remarked: “It is remarkable that the NOx 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

NOx 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 NOx emissions.*” TNO Report at 6 (emphasis added). The lack of any “effective reduction of NOx 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.”

124. 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.

125. 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 NOx 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.”

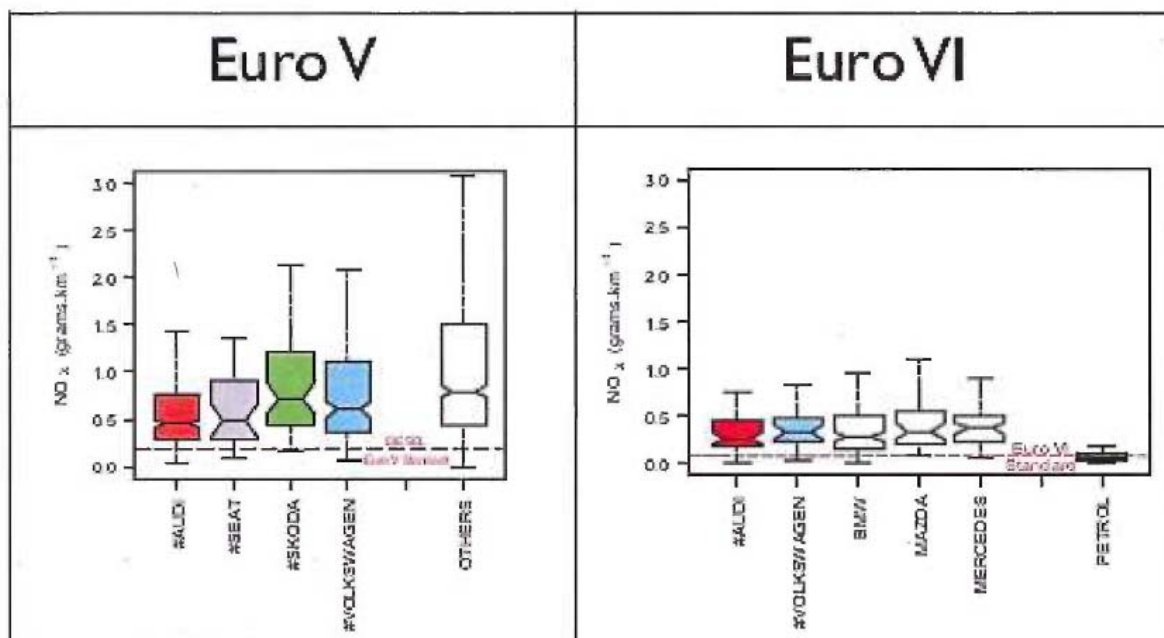
126. Worse still, according to on-road testing in Europe by Emissions Analytics, publicized on October 9, 2015, Mercedes’ diesel cars produced an average of 0.406g/km of NOx on the road, 5 times higher than the Euro 6 level permits—and more than 13 times higher than the U.S. level permits (.03g/km).

127. 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.”

128. 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



129. 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.

130. 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."

131. 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.

132. 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 NOx 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.

133. 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.

134. Studies and reports pertaining to the emissions of Mercedes diesels in Europe are directly relevant to the emissions performance of the BlueTEC Clean Diesels sold in the United States given the engineering similarities across Mercedes' European and American vehicle platforms.

135. Mercedes developed the BlueTEC Clean Diesel engine for use in multiple markets, including Europe and the United States. The basic BlueTEC engine platform and design is the same. Further, while emission standards are more stringent in the U.S. than in Europe, the BlueTEC emission systems used in the United States are but variants of those used in Europe. For example, the catalytic converter is larger in the U.S. vehicles, yet the basic design and layout of the catalytic converter units are the same as in the European version. The same is true for EGR: the BlueTEC vehicles in both markets use the same switchable EGR cooler, and the EGR strategy used in the United States vehicles is otherwise but a variant of that deployed in European vehicles.

136. Because the core components of the BlueTEC Clean Diesel emission system are largely the same across market segments, the underlying technical shortcomings that would motivate Mercedes to employ defeat strategies in Europe would also motivate them to cheat in the United States. Thus, investigations in Europe into underlying motivations and sources of cheating are highly applicable in the U.S. The same defeat strategies or variants of those strategies are deployed in the United States to address the same underlying technological limitations.

137. Plaintiffs' testing of vehicles in the United States, discussed immediately below, supports this conclusion and confirms the presence of a defeat device on Mercedes' United States vehicles and that the European tests are relevant to assessing the plausibility of Plaintiffs'

claims here. Indeed, the American passenger cars tested by Plaintiffs at temperatures below 50°F showed a significant increase in NOx, just as was found in the Europe studies discussed above. This was observed both in the GLK250 and R350 (2.1 Liter and 3.0 Liter engines), which is further proof that the same underlying technical issues from the European variants are driving Mercedes to cheat in the U.S. Plaintiffs' testing already proves a technical link.

2. Plaintiffs' testing of BlueTEC Clean Diesels in the United States.

138. Testing of the Mercedes' engines in the United States also reveals that Mercedes BlueTEC Clean Diesel vehicles are simply *not* clean diesels and that Mercedes has engaged in a large-scale, massive deception.

139. Plaintiffs' testing of Mercedes BlueTEC Clean Diesel 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:



140. Average highway emissions for one BlueTEC Clean Diesel vehicle with a 2.1 liter engine (a BlueTEC Clean Diesel GLK250) 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.

141. 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.

142. 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.

143. 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.

144. 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.

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

146. 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

147. 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

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

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

150. Plaintiffs' experts also conducted on-road testing of a Mercedes BlueTEC Clean Diesel vehicle containing a larger, 3.0 liter engine (a BlueTEC Clean Diesel R350). The results were similar, revealing very high on-road NOx emissions that were much higher than gasoline engines. Stop-and-go driving tests revealed NOx emissions that were, on average, 5 times the standard, while steady driving at various speeds resulted in NOx emission that were, on average, 4.4 times the standard.

151. Plaintiffs' experts tested a third BlueTEC Clean Diesel: the Sprinter 2500 (2.1 liter). The results were similar to the test results for the other two vehicles. In highway driving, the Sprinter produced average NOx emissions of 786 mg/mile (3.1 times the standard), with NOx emissions as high as 1790 mg/mile (7.2 times the standard). In stop-and-go driving, average NOx emissions were 490 mg/mile (2 times the standard), with maximum NOx emissions at 1844

mg/mile (7.4 times the standard). In contrast, the vehicle met applicable standards on the dynamometer.

152. The difference in emissions on the dynamometer versus RDE reveals that the Mercedes Blue-TEC Clean Diesel vehicles have the ability to and do detect when they are being tested on a dynamometer, meaning a defeat device is at work.

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

154. Plaintiffs allege that the following Mercedes BlueTEC Clean 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.

155. Plaintiffs did not test each model to derive plausible allegations that each Affected Vehicle violates U.S. and CARB emissions standards and produces emissions beyond those a reasonable consumer would have expected when he or she purchased their Mercedes. Plaintiffs did not have to, because, they did not need to. As set forth in more detail below, all of the models share either identical or very similar engines and emissions systems, allowing Plaintiffs’ experts to plausibly conclude that all Affected Vehicles violate U.S. and CARB standards and the expectations of a reasonable consumer.

156. Mercedes itself grouped various engines and vehicles into certain emission control groups. There is a standard EPA and CARB allowed practice, whereby vehicle manufacturers combine vehicles and engines into groups to reduce the cost of testing. This same approach lays the groundwork for allegations of similarity and sameness across multiple models, model years, and configurations.

157. When a manufacturer submits an application for emissions certification to the EPA or CARB, they will group similar vehicles into the same test group that (i) have the same engine and emission control system, (ii) have similar weights, and (iii) are certified to the same emission standard. In some cases, only one vehicle will go in a test group. In some cases, there may be two or more vehicles in a test group. The manufacturer will group them based on the equivalency of the engine/emission control system and weight. For example, the 2009 ML320 BlueTEC and R320 BlueTEC are grouped together in the same test group because their engines/emission control systems are identical (3.0 Liter OM642 with SCR after treatment) and they are a similar weight class. The GL320, which has the same engine and emission control system as the ML320/R320, goes into a different test group because it's in a different weight class (even though the engine and emission control system is the same). When a manufacturer groups multiple models onto the same certification application, only one vehicle is used for the manufacturer's testing in order to reduce cost; the manufacturer need not test every vehicle or even a sampling.

158. If the EPA considers the vehicles similar enough to allow grouping on the same application for a test group, then the EPA considers the vehicles identical from an emissions standpoint.

159. Comparisons to the "emissions data vehicle" (EDV) and the "durability data vehicle" (DDV) across multiple test groups also reinforces this conclusion. An EDV is used to demonstrate compliance with the relevant emission standard; this is the vehicle that is actually tested on the dynamometer to determine emissions performance and compliance with the standard. The DDV is used to show the durability of the emission control system and to determine the rate of deterioration for the emission control system over the vehicle's useful life.

160. When a manufacturer submits an application for certification, it will use a unique identifier (like a serial number) to identify the EDV and DDV that are being used to support the application. In many cases, the EDV will be the same vehicle as used in previous years, which means the application is a carryover from the previous year and no model changes were made. If the EDV is the same from one application to the next, the vehicles in those test groups should be considered equivalent from an emissions performance standpoint.

161. The DDV applies more broadly across multiple test groups, as it is primarily a measure of catalyst deterioration. Many different models and model years may use the same DDV to demonstrate the durability of the emissions system. If two test groups use the same DDV, it provides some additional evidence that there is equivalence between the two engines and emission control systems.

162. All variants of the two base Mercedes BlueTEC engines sold in the U.S.—the 2.1L OM651 and the 3.0L OM 642—are well represented by both the Plaintiff list of vehicles and Plaintiffs' test vehicles. Though there are different configurations and possibly subtle changes from vehicle to vehicle and model year to model year, these engines are substantially similar.

163. As noted, manufacturers tend to try to leverage the same engine/emissions technology across multiple vehicle platforms and model years in order to reduce the burden of testing. In fact, a single engine and/or vehicle has been used across multiple vehicle models and models years to achieve certification. This strongly (and plausibly) suggests that any defeat strategies would reasonably operate across the broad class of similar engines. Indeed, it would be prohibitively expensive and impractical for Mercedes to develop completely separate emissions control systems for vehicles that have the same or similar engines.

164. Plaintiffs' experts also conducted additional research into the technical literature providing an understanding of the various configurations of BlueTEC engines sold between 2007 and 2016. The literature provides some insight into the architecture of the variants of the OM642 and OM651 engines. In all cases, the engines are shown to have much more commonality than not, leading Plaintiffs' experts to conclude there is a strong basis for sufficient similarity or "sameness" to warrant inclusion on the list of affected vehicles. *The vehicles are either equivalent from an emissions standpoint to the test vehicles or use the same core technologies and engine platforms as the tested vehicles.*

165. Extensive portable emissions measurement system (PEMS) and/or chassis dynamometer testing was conducted on the following vehicles:

Year	Model	Engine Configuration	Test Group	Mercedes Engine Classification	Testing Conducted
2012	R350 Bluetec	3.0 Liter V6	CMBXT03.0U2B	OM642-30B ⁶	PEMS, Chassis Dyno
2013	GLK250 Bluetec 4matic	2.1 Liter IL4	DMBXT02.2U2A	OM651-22 ⁷	PEMS, Chassis Dyno
2014	Freightliner Sprinter 2500	2.1 Liter IL4	EMBXT02.2HD1	OM651-22-red ⁸	PEMS

166. The vehicles in the above Table can be broken down into four categories, all of which are well represented by the test vehicles identified for the reasons discussed above and as further explained below:

3.0 Liter OM642 with SCR

⁶ Mercedes Application for Certification – Part 1 2012 Model Year, Test Group CMBXT03.0U2B.

⁷ Application for Certification – Part 1 2014 Model Year, Test Group EMBXJ02.2U2A, same as for the 2013 model year since the Emission Data Vehicle (EDV), number X204-Z3016, is the same as for 2013.

⁸ Application for Certification – Part 1 2014 Model Year, Test Group EMBXT02.2HD1.

All of the Affected Vehicles featuring a 3.0 Liter engine share the same basic engine architecture, code named OM642-30 by Mercedes. Although there are variations from revisions of the OM642-30, the same basic emission control architecture is employed through the line.

This architecture of the OM642 engine comprises the following emission control technologies: exhaust gas recirculation (EGR), a turbo-charger, a diesel oxidation catalyst (DOC), a diesel particulate filter (DPF), a selective catalytic reduction (SCR) system, a urea dosing tank and dosing system, and a Bosch EDC17 engine control module (ECM).

This architecture is well represented by the 2012 R350 BlueTEC test vehicle, which uses the OM642-30 engine along with all the aforementioned emission control devices. This test vehicle should be considered a reasonable representation of all 3.0 Liter Affected Vehicles that employ SCR.

3.0 Liter OM642 with NOx Storage Catalyst

The very earliest (MY2007) implementation of the BlueTEC diesel engine employed an OM642-30 engine with a NOx storage catalyst after-treatment. Although this older after-treatment technology differs from the SCR systems, the *same* OM642-30 engine is used. In particular, the EGR system is well represented by the 2012 R350 BlueTEC tested. This is important because the tested R350 employs a defeat device (EGR valve de-rate or shutoff at ambient temperatures below approximately 50°F) to significantly reduce EGR flow rate to prevent condensation in the engine intake. NOx emissions increase as EGR flow rates are reduced. This defeat device is well-documented in Europe and has been demonstrated on the Plaintiffs' R350 BlueTEC test vehicle. This defeat device results in a significant increase in NOx emissions. The 2007-2009 E320 BlueTEC vehicles configured with the NOx storage catalyst make use of the same EGR system as the tested 2012 R350 BlueTEC (as well as many other parts of the same OM642-30 engine system) and, for this reason, the 2012 R350 BlueTEC is be considered appropriately representative.

2.1 Liter OM651 with SCR

All of the Affected Vehicles featuring a 2.1 Liter engine share the same basic engine architecture, internally code named OM651-22 by Mercedes. Based on literature and certification documents, the OM651-22 does not appear to have been significantly altered since its introduction in 2013.

This architecture comprises the OM651-22 engine with exhaust gas recirculation (EGR), a turbo-charger, a diesel oxidation catalyst (DOC), a diesel particulate filter (DPF), a selective catalytic reduction (SCR) system, a urea dosing tank and dosing system, and a Bosch EDC17 engine control module (ECM).

This architecture is well represented by the 2013 GLK250 BlueTEC 4matic test vehicle, which uses the OM651-22 engine along with all the aforementioned emission control devices. This test vehicle should be considered a reasonable representation of all 2.1 Liter Affected Vehicles.

Sprinter

In the Sprinter, the emission control architecture remains largely unchanged from the aforementioned passenger cars. In fact, the Sprinter makes use of the same OM642-30 and OM651-22 engines and SCR emission control systems.

In both cases, this architecture comprises the base engine (either OM651-22 or OM642-30) with exhaust gas recirculation (EGR), a turbo-charger, a diesel oxidation catalyst (DOC), a diesel particulate filter (DPF), a selective catalytic reduction (SCR) system, a urea dosing tank and dosing system, and a Bosch EDC17 engine control module (ECM).

The tested 2014 Freightliner Sprinter 2500 with 2.1 Liter engine is representative of all 2.1 Liter equipped OM651-22 Sprinter vans. Although the 2.1 Liter Sprinter is certified to multiple weight classes in some cases, the emissions generally increase with higher weight ratings. The same engine and emissions control system is used across the various weight ratings, probably with very minor tweaks to account for the difference in weight.

The 3.0 Liter versions of the Sprinter contain OM642-30 engines that were taken from the passenger car market. The 2012 R350 BlueTEC, which employs the same basic OM642-22 architecture and emission control setup, is representative. Furthermore, the more modern 2014 Freightliner Sprinter 2500 that was tested provides additional evidence that a defeat device is likely to be employed in the 3.0 Liter Sprinter platform as well.

167. The foregoing summary, backed by a deeper analysis that is not necessary to further detail at this time, is sufficient to demonstrate the representativeness of the test vehicles to the Plaintiffs' vehicles (and, indeed, all Affected Vehicles). Any differences between the test

vehicles and the Affected Vehicles are not material and not significant enough to suggest that the same defeat device would not be present in all Affected Vehicles.

168. Indeed, in the Volkswagen case, the EPA issued violation notices based on engine size (2.0 and 3.0 liters) and did not differentiate based on models or years. In other words, all 2.0 models were in violation, not, for example, some but not all Jettas or Jettas but not Passatts.

3. Mercedes' dirty "defeat device" scheme.

169. Plaintiffs' United States testing results and the European reports and studies cited above definitely demonstrate that Mercedes has programmed its BlueTEC Clean Diesels with a so-called "defeat device."

170. All modern engines are integrated with sophisticated computer components to manage the vehicle's operation, such as an engine control unit ("ECU"). Bosch tested, manufactured and sold the ECU system used by Volkswagen, Mercedes, and FCA in the Affected Vehicles. This system is more formally referred to as the Electronic Diesel Control Unit 17 ("EDC Unit 17"). Upon its introduction, EDC Unit 17 was publicly-touted by Bosch as follows:⁹

EDC17 ... controls every parameter that is important for effective, low-emission combustion.

Because the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly in any vehicle segment on all the world's markets. In addition to controlling the precise timing and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides. The Bosch EDC17 determines the injection parameters for each cylinder, making specific adaptations if necessary. This improves the precision of injection throughout the vehicle's entire

⁹ See Bosch Press Release, *The brain of diesel injection: New Bosch EDC17 engine management system* (Feb. 28, 2006), <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>.

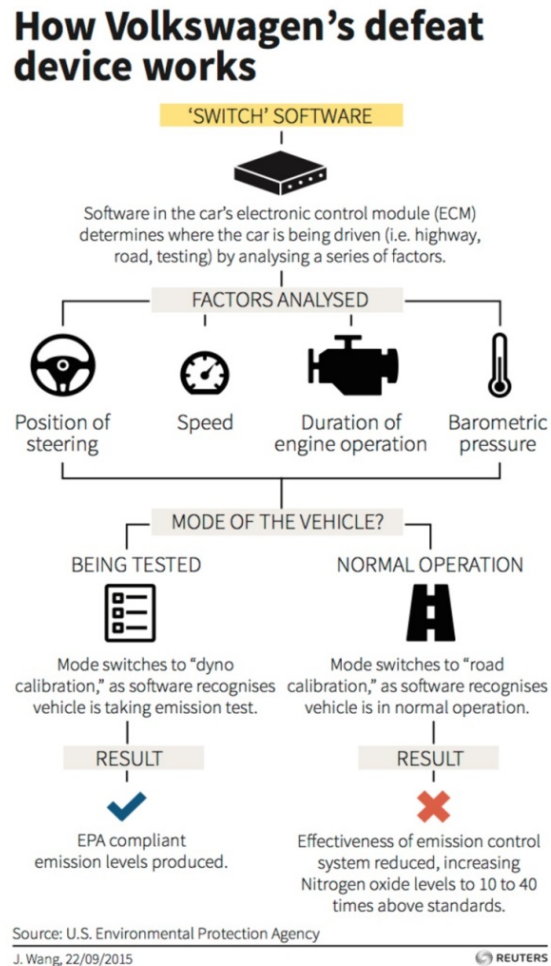
service life. The system therefore makes an important contribution to observing future exhaust gas emission limits.

171. Bosch worked with each vehicle manufacturer, including Mercedes, that utilized EDC Unit 17 to create a unique set of specifications and software code to manage the vehicles' engine operation.

172. With respect to the Affected Vehicles, however, EDC Unit 17 was also enabled by Bosch and Mercedes to surreptitiously evade emissions regulations. Bosch and Mercedes worked together to develop and implement a specific set of software algorithms for implementation in the Affected Vehicles, which enabled Mercedes to adjust fuel levels, exhaust gas recirculation, air pressure levels, and even urea injection rates (for applicable vehicles).¹⁰ When carmakers test their vehicles against EPA emission standards, they place their cars on dynamometers (large rollers) and then perform a series of specific maneuvers prescribed by federal regulations. Bosch's EDC Unit 17 gave Volkswagen, Mercedes, and other manufacturers the power to detect test scenarios by monitoring vehicle speed, acceleration, engine operation, air pressure, and even the position of the steering wheel. When the EDC Unit 17's detection algorithm detected that the vehicle was on a dynamometer (and undergoing an emission test), additional software code within the EDC Unit 17 downgraded the engine's power and performance and upgraded the emissions control systems' performance by switching to a "dyno calibration" to cause a subsequent reduction in emissions to legal levels. Once the EDC Unit 17 detected that the emission test was complete, the EDC Unit would then enable a different "road calibration" that caused the engine to return to full power while reducing the emissions control

¹⁰ See, e.g., *Engine management*, Bosch Auto Parts, http://de.bosch-automotive.com/en/parts_and_accessories/motor_and_sytems/diesel/engine_management_2/engine_control_unit_1 (last accessed Nov. 30, 2016).

systems' performance, and consequently caused the car to spew the full amount of illegal NOx emissions out on the road.¹¹ This general process is illustrated in the following diagram :



173. This workaround was and is illegal. The Clean Air Act expressly prohibits defeat devices, defined as any auxiliary emission control device “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use.” 40 C.F.R. § 86.1803-01; *see also id.* § 86.1809-10 (“No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device.”). Moreover, the Clean Air Act prohibits the sale

¹¹ Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>.

of components used as defeat devices, “where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3). Finally, in order to obtain a certificate of compliance (“COC”), automakers must submit an application, which lists all auxiliary emission control devices installed in the vehicle, a justification for each, and an explanation of why the control device is not a defeat device.

174. Thus, in order to obtain the COCs necessary to sell their vehicles, Mercedes did not disclose, and affirmatively concealed, the presence of the test-detecting and performance-altering software code that it developed with Bosch from government regulators, thus making that software an illegal defeat device. In other words, Mercedes lied to the government, its customers, its dealers, and the public at large.

175. Because the COCs were fraudulently obtained, and because the Affected Vehicles did not conform “in all material respects” to the specifications provided in the COC applications, the Affected Vehicles were never covered by a valid COC, and thus, were never legal for sale; nor were they EPA and/or CARB compliant, as represented. Mercedes and Bosch hid these facts from the EPA, other regulators, its dealers and consumers, and it continued to sell and lease the Affected Vehicles to the driving public, despite their illegality, and with the complicity of Bosch.

176. Mercedes’ illegal workaround was enabled by its close partnership with Bosch, which enjoyed a sizable portion of its annual revenue from manufacturing parts used in Mercedes’ and other manufacturers’ diesel vehicles.¹² Bosch was well aware that Mercedes was using its emissions control components as a defeat device and, in fact, worked with Mercedes to develop the software algorithm specifically tailored for the Affected Vehicles.

¹² Approximately 50,000 of Bosch’s 375,000 employees worked in the diesel technology operations branch of Bosch. *See Bosch probes whether its staff helped VW’s emissions rigging*, Automotive News (Jan. 27, 2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging>.

a. Bosch played a critical role in the defeat device scheme.

177. Discovery of Bosch has just begun in a separate case, but the evidence contained in publicly available pleadings in *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (“VW Clean Diesel Litigation”) already proves that Bosch played a critical role in the scheme to evade U.S. emissions requirements for diesel vehicles, including Volkswagen and Mercedes vehicles. Plaintiffs’ detailed and specific allegations against Bosch in this section are based solely on publicly-available documents, Plaintiffs’ own research, and information contained in publicly-available pleadings in the VW Clean Diesel Litigation. All paragraphs that contain citations to documents prefixed “VW-MDL2672” are drawn directly from the publicly-available Volkswagen-Branded Franchise Dealer Amended and Consolidated Class Action Complaint in the VW Clean Diesel Litigation, Dkt. No. 1969 (“VW Dealer Complaint”), which is available to the public on the Court’s website.

178. According to pleadings in the VW Clean Diesel Litigation, *in 2008, Bosch wrote Volkswagen and expressly demanded that Volkswagen indemnify Bosch for anticipated liability arising from the use of the Bosch-created “defeat device” (Bosch’s words), which Bosch knew was “prohibited pursuant to ... US Law.”*¹³ Volkswagen apparently refused to indemnify Bosch, but Bosch nevertheless continued to develop the so-called “akustikfunktion” (the code name used for the defeat device) for Volkswagen for another seven years. VW Clean Diesel Litigation pleadings set forth that during that period, Bosch concealed the defeat device in communications with U.S. regulators once questions were raised about the emission control system in the Affected Vehicles, and went so far as to actively lobby lawmakers to promote Volkswagen’s “Clean Diesel” system in the U.S. Bosch’s efforts, taken together with evidence

¹³ VW-MDL2672-02570091 (English translation) (emphasis added).

described above of Bosch's actual knowledge that the "akustikfunktion" operated as an illegal defeat device, demonstrate that Bosch was a knowing and active participant in the decade-long illegal enterprise to defraud U.S. consumers.

179. Although this case is not about Volkswagen, Bosch's history with Volkswagen provides background and support for its participation in the RICO enterprise alleged herein, of which Bosch and Mercedes were active participants.

b. Volkswagen and Bosch conspire to develop the illegal defeat device.

180. Bosch tightly controlled development of the control units in the Affected Vehicles, and actively participated in the development of the defeat device. This is to be expected given that much of the software and codes within the EDC17 are proprietary and represent Bosch's valuable intellectual property.

181. As discussed above, Bosch introduced a new generation of diesel ECUs for Volkswagen. The development of the EDC17 was a massive undertaking, which began years before Volkswagen began its push into the U.S. market. At least twenty Bosch engineers were working full-time on writing the code for the EDC17 in the 2001 time frame. By 2004, long before the November 20, 2006 meeting at which Volkswagen apparently decided to use the defeat device to "pass" emission certification standards in the U.S., Bosch and Volkswagen had already entered into preliminary agreements for further development of the EDC17.¹⁴

182. A February 28, 2006 Bosch press release introduced the "New Bosch EDC17 engine management system" as the "brain of diesel injection" which "controls every parameter that is important for effective, low-emission combustion." The EDC17 offered "[e]ffective

¹⁴ See PowerPoint presentation at VW-MDL2672-02559528. This internal Volkswagen PowerPoint describes the "akustikfunktion" as activated in "recognition of emission related environment conditions" and proposed it as a solution to the "registration/certification [problem] in the US."

control of combustion” and a “[c]oncept tailored for all vehicle classes and markets.” In the press release, Bosch touted the EDC17 as follows:¹⁵

EDC17: Ready for future demands
Because the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly in any vehicle segment on all the world’s markets. In addition to controlling the precise timing and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides. The Bosch EDC17 determines the injection parameters for each cylinder, making specific adaptations if necessary. This improves the precision of injection throughout the vehicle’s entire service life. The system therefore makes an important contribution to observing future exhaust gas emission limits.

183. Bosch’s EDC17 was the technology behind Volkswagen’s ambition. The EDC17 and the development of its underlying software were integral to Volkswagen’s entire diesel strategy, which by late 2006 included creating software to sense when the vehicles were in test mode and then manipulate the emission control system at that time. This could not have been accomplished without years of collaborative work with Bosch.¹⁶

184. As early as February 2005, an internal feasibility study drafted by Ulrich Hackenberg (Audi Development Chief) mentioned Bosch’s EDC17 as part of a strategy to reduce diesel vehicle emissions of nitrogen oxides (“NOx”) by creating a change in engine electronics.¹⁷ The study discussed diesel strategies in the U.S. market in light of tightening U.S. emission standards. As discussed above, shortly after the cheating scandal became public, Volkswagen suspended Hackenberg, and he later resigned.¹⁸

¹⁵ See Bosch press release, *The brain of diesel injection: New Bosch EDC17 engine management system* (Feb. 28, 2006), <http://www.bosch-resse.de/presseforum/details.htm?txtID=2603&locale=en>.

¹⁶ VW Dealer Complaint ¶ 75.

¹⁷ VW-MDL2672-00744825.

¹⁸ Jack Ewing, *Audi Executive Resigns After Suspension over VW Emissions Scandal*, NY Times (Dec. 4, 2015), <http://www.nytimes.com/2015/12/05/business/international/ulrich-hackenberg-suspended-over-volkswagen-emissions-scandal-resigns.html>.

185. Bosch made clear that the EDC17 was a “[c]oncept tailored for all vehicle classes and markets” that could “be adapted to match particular requirements [and] ... be used very flexibly in any vehicle segment on all the world’s markets.” Thus, Bosch was clearly intending for the EDC17 to be used in more than just Volkswagen vehicles. Bosch thus manufactured, developed, and provided the ECU and its base of software to Volkswagen, Mercedes, FCA, and others.¹⁹

186. Bosch and Mercedes worked together closely to modify the software, and to create specifications for each vehicle model. Indeed, customizing a road-ready ECU is an intensive three- to five-year endeavor involving a full-time Bosch presence at an automaker’s facility. Bosch and its customers work so closely that Bosch purposefully locates its component part manufacturing facilities close to its customers’ manufacturing plants.²⁰

187. All Bosch ECUs, including the EDC17, run on complex, highly proprietary engine management software over which Bosch exerts near-total control. In fact, the software is typically locked to prevent customers, like Volkswagen and Mercedes, from making significant changes on their own. The defeat device was just such a software change—one that would allow modifications to the vehicle’s emission control to turn on only under certain circumstances—that Volkswagen or Mercedes could not have made without Bosch’s participation.²¹

188. Bosch’s security measures further confirm that its customers cannot make significant changes to Bosch software without Bosch involvement. Bosch boasts that its security modules protect vehicle systems against unauthorized access in every operating phase, meaning

¹⁹ VW Dealer Complaint ¶ 77.

²⁰ VW Dealer Complaint ¶ 78.

²¹ VW Dealer Complaint ¶ 79.

that no alteration could have been made without either a breach of that security—and no such claims have been advanced—or Bosch’s knowing participation.²²

189. Unsurprisingly, then, at least one car company engineer has confirmed that Bosch maintains absolute control over its software as part of its regular business practices:²³

I’ve had many arguments with Bosch, and they certainly own the dataset software and let their customers tune the curves. Before each dataset is released it goes back to Bosch for its own validation.

Bosch is involved in all the development we ever do. They insist on being present at all our physical tests and they log all their own data, so someone somewhere at Bosch will have known what was going on.

All software routines have to go through the software verification of Bosch, and they have hundreds of milestones of verification, that’s the structure

The car company is *never* entitled by Bosch to do something on their own.

Thus, Bosch cannot convincingly argue that the development of the “akustik” device was the work of a small group of rogue engineers.²⁴

190. In fact, Volkswagen’s and Bosch’s work on the EDC17 reflected a highly unusual degree of coordination. It was a massive project that required the work of numerous Bosch coders for a period of more than ten years, or perhaps more.²⁵ Although Bosch publicly

²² *Reliable Protection for ECUs*, ESCRYP (May 12, 2016), <https://www.escrypt.com/company/single-news/detail/reliable-protection-for-ecus/>.

²³ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/>.

²⁴ VW Dealer Complaint ¶ 81.

²⁵ Approximately 50,000 of Bosch’s 375,000 employees worked in the diesel technology operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. *See Bosch Probes Whether Its Staff Helped VW’s Emissions Rigging*, Automotive News (Jan. 27, 2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging>.

introduced the EDC17 in 2006, it had started to develop the engine management system years before.²⁶

191. The size and complexity of the undertaking is captured by a spreadsheet that lists entries for work done by Volkswagen and Bosch employees on the EDC17 from late 2003 to 2009. Each entry is given one of six descriptors: enhancement, new feature, service, support, integration, or bug/defect. In total, the spreadsheet contains 8,565 entries and lists hundreds of Bosch individuals.²⁷

192. The same degree of coordination was also required of Bosch and Mercedes in order for the EDC17 to work on Mercedes vehicles.

193. The joint enterprise is also memorialized in a series of agreements between Bosch and Volkswagen described in the Dealer Complaint dating back to as early as mid-2005, reflecting negotiations that date prior to January 2005. On April 7, 2005, for example, Bosch GmbH's [REDACTED] and [REDACTED] executed the "Framework Development Agreement for Software Sharing in EDC/MED17 Control Unit Projects from the Robert Bosch (RB) Diesel Systems (DS) And Gasoline Systems (GS) Motor Vehicle Units." VWAG countersigned the agreement on September 26, 2005. Importantly, the agreement defined software sharing as "the handing over of BOSCH software in the form of object code by BOSCH to VW, so that VW can use this BOSCH software as a basis for developing VW modules for specific EDC/ME(D)17 projects using software development environments from BOSCH." The agreement states that "[p]roviding the VW modules and integrating them to form a complete software product requires close cooperation between the Parties."²⁸

²⁶ Bosch press release, *The brain of diesel injection: New Bosch EDC17 engine management system* (Feb. 28, 2006), <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>.

²⁷ VW-MDL2672-02559780.

²⁸ VW Dealer Complaint ¶ 84.

194. The contract also outlined responsibilities for software sharing and co-development. Throughout development, the contract dictated Bosch was to retain control over the software. While Bosch provided (and owned) the object code, and Volkswagen developed (and owned) the modules, the parties agreed that “BOSCH carries out any modifications to the BOSCH software that are necessary in order to integrate the intended VW modules at the expense of VW.” The agreement further specifies that Bosch would monitor the software, test the implementation of Volkswagen modules, and grant written approval to Volkswagen modules. Only if everything met Bosch’s standards would it then “deliver[] the final complete software product for VW to use in combination with a BOSCH control unit.”²⁹ Thus, Bosch needed to conduct extensive testing before delivering the product to VW.

195. Yet another document described in the Dealer Complaint demonstrates the tight grip that Bosch maintained over EDC17 software and any modifications made to it. On February 20, 2006, VWAG and Bosch (signed by Bosch GmbH’s [REDACTED] of the Diesel Systems division), entered into a supplemental agreement concerning the use of “expanded software” documentation for the EDC17 and EDC16 (its predecessor).³⁰ Pursuant to this agreement, Bosch identified 35 named individuals, affiliated with either VWAG or IAV (Ingenieurgesellschaft Auto und Verkehr), who were granted access to expanded documentation for the EDC17 for specific functions relating to emissions. Any changes to the list of persons to be given access required the explicit consent of Bosch GmbH, and the access was temporary and non-transferable. Critically, the agreement stated that “[t]his right of use shall not include the right to the change, modify or use the DOCUMENTATION with third-party control units.”³¹

²⁹ Volkswagen produced an English translation of the agreement at VW-MDL2672-03752699.

³⁰ Volkswagen produced an English translation of the agreement at VW-MDL2672-03752757.

³¹ VW-MDL2672-03752757.

Bosch thereby tightly controlled both who could access the expanded documentation and the scope of their use of such materials.

196. A later agreement between Bosch GmbH and Volkswagen, described in the Dealer Complaint, this one from June 12, 2006, governed the implementation, integration, project management, and delivery of certain EDC 17 software functions for diesel vehicles that VWAG had requested from Bosch. This agreement, too, made clear that any changes not explicitly detailed in the agreement would require further approval from Bosch.³²

197. Along the same lines, several years later, in a February 5, 2011 agreement described in the Dealer Complaint, Bosch granted VWAG a license to further develop Bosch Denoxtronic functions for the treatment of exhaust from diesel engines. Again, the contract is clear that Bosch maintains rights over the Denoxtronic functions.³³ On information and belief, Bosch would have asserted the same control over Mercedes' use of EDC17 software.

198. To recap, as the EA 189 project moved to series production in 2009, Bosch's documented role was to provide to Volkswagen executable software for installation in the EDC17 controller at the VW production line.³⁴ Bosch insisted that Bosch control the definition of the EDC17 software, that Bosch test the software using bench top and vehicle testing, that Bosch produce the final software release for series production, and that Bosch deliver the software to Volkswagen for installation in the EA 189 engines used in the Affected Vehicles.³⁵ Bosch's firm control over the development of and modifications to EDC17 is undeniable. It is inconceivable, then, that Bosch did not know that the software it was responsible for defining, developing, testing, maintaining, and delivering contained an illegal defeat device.

³² VW Dealer Complaint ¶ 87.

³³ VW Dealer Complaint ¶ 88.

³⁴ VW-MDL2672-03752699.

³⁵ VW Dealer Complaint ¶ 89.

199. In fact, as detailed in the Dealer Complaint, Bosch was in on the secret and knew that Volkswagen was using Bosch's software algorithm as an "on/off" switch for emission controls when the Class Vehicle was undergoing testing. As noted above, it has been said the decision to cheat was an "open secret" at Volkswagen.³⁶ It was an "open secret" at Bosch as well.

200. Volkswagen and Bosch personnel employed code language for the defeat device, referring to it as the "acoustic function" (in German, "akustikfunktion"). As described above, the roots of the "akustikfunktion"—and likely the cheating—can be traced back to the late 1990s when Audi devised software called the "akustikfunktion" that could switch off certain functions when the vehicle was in a test mode.³⁷ The "akustik" term is derived from the function's ability to modify the noise and vibration produced by the engine. News articles report that, in 2006, VWAG further developed this "akustikfunktion" for the Affected Vehicles.³⁸

201. Written communications between and within Bosch and Volkswagen, as set forth in the Dealer Complaint, describe the "akustikfunktion" in surprising detail. In emails sent as early as July 2005 from VWAG's Andreas Specht to Bosch's [REDACTED], [REDACTED], [REDACTED] and [REDACTED] Specht discussed emissions measurements from vehicles

³⁶ Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>. See also Jay Ramey, *VW chairman Poetsch: Company 'tolerated breaches of rules'*, Autoweek (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules> (it was necessary for the "EA 189 engine to pass U.S. diesel emissions limits within the budget and time frame allotted").

³⁷ Martin Murphy, *Dieselgate's Roots Stretch Back to Audi*, Handelsblatt Global (Apr. 19, 2016), <https://global.handelsblatt.com/edition/413/ressort/companies-markets/article/dieselgates-roots-stretch-back-to-audi?ref=MTISODU1>.

³⁸ *Volkswagen Probe Finds Manipulation Was Open Secret in Department: Newspaper*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>. VW Group Chairman, Hans Dieter Poetsch, explained that a small group of engineers and managers was involved in the creation of the manipulating software. See *VW Chairman Poetsch: Company 'Tolerated Breaches of Rules'*, Auto Week (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules>. See also *Scandal Explained*, BBC (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>; Sept. 18, 2015, <http://www.autocar.co.uk/car-news/industry/vw-emissions-scandal-how-volkswagens-defeat-device-works>.

using the “akustikfunktion” in connection with U.S. emission compliance.³⁹ A February 2014 PowerPoint prepared by VWAG explained that the akustikfunktion measured speed, acceleration, and engine operation to determine whether a vehicle is undergoing testing.⁴⁰

202. As detailed in the Dealer Complaint, on November 13, 2006, VWAG’s Dieter Mannigel (Software Design, U.S. Diesel Engines, Drivetrain Electronics) circulated via email a PowerPoint presentation prepared for VWAG’s Rudolf Krebs (who joined Volkswagen from Audi in 2005) about how the “akustikfunktion” is activated and deactivated in recognition of emissions-related environmental conditions, such as temperature and pressure. The presentation explained that the existing vehicles functioning with different drive cycles could not pass U.S. emission tests, and thus proposed the release of the “akustikfunktion” to be driving dependent.⁴¹

203. As described in the Dealer Complaint, on November 20, 2006, Mannigel emailed his colleagues to summarize a meeting with Krebs, at which the PowerPoint described above was likely presented. Krebs had emphasized the importance of not getting caught by U.S. regulators using the “akustikfunktion,” and warned that the function must be explainable to regulators. Krebs was skeptical about using the akustikfunktion in the U.S. market due to potential regulatory and legal exposure, and Mannigel was nervous that regulators would be able to detect the “akustikfunktion.” Nevertheless, Mannigel reported, Volkswagen was going ahead with the expanded “akustikfunktion” with Bosch.⁴² It is likely this was the meeting at which VW decided to use the “akustikfunktion” as a defeat device to evade compliance with U.S. emission requirements.

³⁹ VW-MDL2672-02559611.

⁴⁰ VW-MDL2672-02572122.

⁴¹ VW-MDL2672-02559527. As set forth in the Dealer Complaint, the email attached an internal Volkswagen PowerPoint that describes the “akustikfunktion” as activated in recognition of emission related environment conditions and proposed it as a solution to the registration emissions certification problems in the U.S. VW-MDL2672-02559528.

⁴² VW-MDL2672-02559526.

204. As set forth in the Dealer Complaint, well after the defeat device was developed and integrated into hundreds of thousands of vehicles, Volkswagen and Bosch continued to work together to refine and maintain it. For example, both Bosch and Volkswagen were involved in the calibration of the defeat devices for the vehicles. A November 2014 email from VWAG's Juergen Hintz, entitled "Akustikfunktion," relayed a telephone call with Bosch's [REDACTED] about the "akustikfunktion" and Volkswagen's role. VWAG's C. Arenz responded that while he had been responsible for the operation of the "akustikfunktion," Bosch was responsible for its calibration. In fact, Arenz disclosed that he planned to meet with Bosch (along with Michael Brand) about calibrating the "akustikfunktion" the following week.⁴³ In another email, Hintz wrote that Bosch's [REDACTED] told him that Bosch would be making certain changes to the "akustikfunktion" based on Volkswagen's specifications.⁴⁴

205. In sum, as described in the Dealer Complaint, Bosch worked hand-in-glove with Volkswagen to develop and maintain the akustikfunktion/defeat device.⁴⁵ On information and belief, it did so with Mercedes as well.

c. Volkswagen and Bosch conspire to conceal the illegal “akustikfunktion.”

206. As set forth in the Dealer Complaint, by 2007, and likely earlier, Bosch was critical not only in developing the “akustikfunktion,” but also in concealing it. On March 9, 2007, Bosch’s [REDACTED] emailed VW AG’s Mathias Klaproth (a technical developer) and Mannigel with the subject of “Erweiterungen Akustikfunktion” (in English, “Further

⁴³ VW-MDL2672-02569895.

⁴⁴ Translation at 00387135.

⁴⁵ From the information available to date, as described in the Dealer Complaint, it appears that [redacted] and [redacted] from Bosch were involved in the scheme to develop the [redacted] defeat device; [redacted] and [redacted] (based on a July 2007 [redacted] of VWAG [redacted] ht); [redacted] (based on a March 2007 email with VWAG's Klaproth and [redacted] nnigel); [redacted] and [redacted] (based on a June 2, 2008 letter attempting to limit Bosch's liability); and [redacted] (recipient of the letter attached to VWAG's June 6, 2008 response).

Development of the Acoustic Function”).⁴⁶ [REDACTED] *confirmed that Bosch would remove the description of the enhanced “akustikfunktion” from Volkswagen’s fuel pump specification sheets D2250 and D2278.* Klaproth and Mannigel agreed not to list the function in documentation in the U.S., but disagreed whether to disclose it in Europe. Klaproth then took [REDACTED] off the email chain and insisted the “akustikfunktion” would be applied to the European projects, to which Mannigel responded that he would contact Klaproth off-line.

207. Bosch was concerned about getting caught participating in the defeat device fraud. As reported in the German newspaper, *Bild am Sonntag*, and a French publication, a Volkswagen internal inquiry found that in 2007, Bosch warned Volkswagen by letter that using the emissions-altering software in production vehicles would constitute an “offense.”⁴⁷

208. As the Dealer Complaint alleges, Bosch expressed similar concerns that use of the defeat device it had created would violate U.S. law. These concerns culminated in a June 2, 2008 letter from Bosch’s [REDACTED] to Volkswagen’s Thorsten Schmidt in which Bosch demanded that Volkswagen indemnify Bosch for any liability arising from the creation of a “defeat device,” as Bosch itself called it in English. Through the letter, Bosch sought to clarify the roles and responsibilities of Volkswagen and Bosch regarding the development of the EDC 17, and demanded that Volkswagen indemnify Bosch for any legal exposure arising from work on the defeat device.⁴⁸

The further development [of the EDC17] requested by your company will result, in addition to the already existing possibility of activating enriched data manually, *in an additional path for the*

⁴⁶ VW-MDL2672-02559515.

⁴⁷ *Bosch warned VW about illegal software use in diesel cars, report says*, Automotive News (Sept. 27, 2015), <http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>; *VW Scandal: Company Warned over Test Cheating Years Ago*, BBC (Sept. 27, 2015), <http://www.bbc.com/news/business-34373637>.

⁴⁸ VW-MDL2672-02570091 (English translation) (emphasis added).

potential to reset data to act as a “defeat device.” We ask you to have the attached disclaimers executed by your company.

The letter uses the words “defeat device” in English, and further explained that “[t]he **usage of a defeat device is prohibited pursuant to ... US Law (CARB/EPA)** (see definition footnote 2).”⁴⁹

209. Bosch’s June 2, 2008 letter also warned Volkswagen that the software modifications Volkswagen requested could allow “the certified dataset [to be] replaced with another, possibly non-certified data set[,]” which could, in turn, cause “the vehicle’s general operating license (registration) [to] become void.”⁵⁰ Creating two data sets on emission compliance was illegal under U.S. law. Bosch knew this, and that is why it requested indemnification from Volkswagen.

210. [REDACTED] and [REDACTED] at Bosch signed the proposed indemnification; the signature lines for Volkswagen were left blank. When Volkswagen’s Hermann Middendorf responded to [REDACTED] at Bosch. He did not deny the existence of a defeat device, but instead attacked Bosch for involving “the lawyers.”⁵¹

211. Discovery in the VW Clean Diesel Litigation is ongoing, and Plaintiff does not have a full record of what unfolded in response to Bosch’s June 2, 2008 letter. However, it is indisputable that Bosch continued to develop and sell to Volkswagen hundreds of thousands of the defeat devices for U.S. vehicles following Bosch’s express, written recognition that its software was being used in vehicles as a “defeat device” that was “prohibited pursuant to ... US Law.”

⁴⁹ *Id.* at 92 (emphasis added).

⁵⁰ *Id.* at 93.

⁵¹ VW Dealer Complaint ¶ 101.

212. VWAG and Bosch continued over the next few years to refine the defeat device. This was a lengthy and complicated process that required concealing its existence from the onboard diagnostic system, which was intended to report emission controls to comply with U.S., and particularly California's, requirements. In a July 18, 2011 email, Audi's Olaf Busse proposed tying the activation of the "akustikfunktion" more directly to steering angle, instead of vehicle temperature, which was proving to be problematic. This request coincided with inquiries from CARB about on-board diagnostics issues. VWAG's Hanno Jelden (Head of Powertrain Electronics), worried that the change would be too obvious and could not be explained to regulators.⁵²

213. Denner and others were also in on the secret. Notes from a May 28, 2014 meeting between Bosch and Volkswagen executives at VW headquarters reflect that the topic of “akustikfunktion” was discussed in the context of Volkswagen’s and Bosch’s partnership in the U.S. market. VWAG’s Friedrich Eichler (Powertrain Development Chief) mentioned the importance of the “akustikfunktion” in Bosch diesel engines. Bosch participants at the meeting included Denner, as well as [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. For VWAG, Winterkorn was also present.⁵³

d. Volkswagen and Bosch conspire in the U.S. and Germany to elude U.S. regulators who regulated not just Volkswagen diesels, but all diesels.

214. The purpose of the defeat device was to evade stringent U.S. emissions standards. Once Bosch and VW perfected the defeat device, therefore, their attention turned to deceiving U.S. regulators.

⁵² VW-MDL2672-0259489. Jelden was subsequently suspended in connection with the emissions scandal.

⁵³ VW-MDL2672-02569909.

215. Evidence in the VW Clean Diesel Litigation already shows that Bosch GmbH employees expressly conspired with VW to hide the function of the defeat device. Shortly after the March 2007 email exchange detailed above, in which VWAG's Klaproth and Mannigel confirmed to Bosch GmbH's [REDACTED] that the "akustikfunktion" would not be listed in the U.S. documentation for the vehicles, an internal email from VWAG's Frank Alich (Development, OBD Diesel) to various individuals at VWAG about scheduling a May 9, 2007 meeting, lamented the trouble distinguishing between acoustic and non-acoustic modes relating to soot simulation. Alich complained that he did not know how he would explain the problem to CARB.⁵⁴

216. Bosch's North American subsidiary, Defendant Bosch LLC, was also part of and essential to the fraud. Bosch LLC worked closely with Bosch GmbH and Volkswagen, in the United States and in Germany, to ensure that the non-compliant vehicles passed U.S. emission tests. As set forth in the VW Clean Diesel Litigation, Bosch LLC employees frequently communicated with U.S. regulators, and actively worked to ensure the vehicles were approved by regulators.

217. Employees of Bosch LLC, Bosch GmbH, and IAV provided specific information to U.S. regulators about how Volkswagen's vehicles functioned and unambiguously stated that the vehicles met emissions standards. Bosch LLC regularly communicated to its colleagues and clients in Germany about ways to deflect and diffuse questions from US regulators about the vehicles—particularly CARB. For example, in a May 15, 2008 email from Audi AG's Martin Hierse to Bosch GmbH's [REDACTED] (Diesel Systems, Engineering Powertrain Diagnosis), copying Audi's Stefan Forthmann, Hierse noted that auxiliary emission control

⁵⁴ VW-MDL2672-02555825.

devices (“AECDs”) were a very important subject for certification of U.S. diesels, and admitted discrepancies with the U.S. authorities in AECD documentation.⁵⁵ The regulators’ questions were chipping away at the discrepancies between on board diagnostic systems, and the emission controls.

218. Accordingly, Hierse worried that there was a possibility that one of the Volkswagen Group’s representatives in the U.S. was providing the regulators too much information and data concerning AECD disclosure. He then asked to discuss the matter with Bosch’s [REDACTED] either by telephone or in private at one of their offices due to the confidentiality of the issue.⁵⁶

219. Bosch and VW worked together to craft responses to CARB’s questions. For example, in an April 2009 email, Suanne Thomas (VW America Regulatory Strategist) and Bosch LLC’s [REDACTED] discussed results from tests sent from an individual at IAV showing defects in the Affected Vehicles’ in-use ratios and missing readiness information.⁵⁷

220. On July 1, 2009, VWGoA’s Thomas emailed colleagues, again raising concerns about documenting AECDs in Model Year 2010–2011 vehicles to U.S. authorities. At issue was the “low level of detail in the AECD documents [so that] ARB is not able to confirm which strategies are for component protection.” Thomas then relayed that CARB asked whether there was a problem getting Bosch to disclose its strategy.⁵⁸ In a related email, Thomas commented: “I was not involved in the discussions ... with ARB on diesel, however I get the impression that there is a misunderstanding at VW regarding AECDs. That this misunderstanding is the root of

⁵⁵ VW-MDL2672-11873274.

⁵⁶ VW Dealer Complaint ¶ 109.

⁵⁷ VW Dealer Complaint ¶ 110.

⁵⁸ VW-MDL2672-02469411.

the issue – why ARB is not satisfied with the AECD disclosure for diesels.”⁵⁹ CARB was asking the right questions, and not getting honest answers.

221. Further, Bosch cannot persuasively distance Bosch GmbH from the communications with regulators, as Bosch GmbH employees directly participated in meetings with CARB. For example, in January 2015, Bosch GmbH (specifically, Bosch LLC’s [REDACTED], [REDACTED], [REDACTED] Quality Control, and [REDACTED], Sales Quality and Warranty) conferred about setting up a conference call with Audi and CARB to explain problems with the diagnostics relating to faulty fuel pumps, issues that likely arose because the defeat device was causing problems with the onboard diagnostic system in certain vehicles. Suanne Thomas of VW coordinated the call between Bosch and CARB.⁶⁰

222. Volkswagen and Bosch held CARB and the EPA at bay with finesse (and fraud) to obtain the necessary COCs and EOs to keep vehicles on the road. In an August 2009 email from VWGoA shared a comment from CARB regarding 2009 Volkswagen Jetta TDIs test results that “VW ‘blatantly did the wrong thing’” and asking Volkswagen if this “is a base strategy from Bosch.” Volkswagen responded, “yes.”⁶¹

223. This is not the only document crediting Bosch strategies to obtain regulatory approval. A May 17, 2011 email from CARB to Thomas regarding Volkswagen 2014 TDIs referenced a 2010 conference call where they discussed “the bosch ZFC [Zero Fuel Calibration] strategy and a possible fuel rail pressure disablement.” VWAG’s Alich then relayed that “ARB accepted our proposal to implement the ZFC ‘time to closed loop’ monitor with MY [model year] 2013.”⁶² In addition, in a May 31, 2013 email regarding 2.0-liter vehicles, Thomas

⁵⁹ VW-MDL2672-02120937.

⁶⁰ VW Dealer Complaint ¶ 112.

⁶¹ VW-MDL2672-00912096.

⁶² VW-MDL-2672-02464246.

referenced a “[p]roposed strategy” to “get the executive order [from CARB] based on the ‘Bosch’ strategy.”⁶³ These communications demonstrate Bosch’s deep understanding of what regulators allowed and would not allow, and what Bosch did to help VW obtain approval.

224. In short, there can be no argument that Bosch left communications with the regulators to VW, or that Bosch did not understand the regulatory implications of the defeat device software VW paid Bosch to develop. Employees of Bosch GmbH and Bosch LLC worked together with VW to convince U.S. regulators to approve the vehicles for sale and use in this country. At the time Bosch was concealing VW’s emission cheating from regulators, it knew its device was being used by other manufacturers like Mercedes to defeat emission standards. The examples below identify at least six additional instances in which Bosch communicated directly with U.S. regulators to discuss concerns with emissions detection and compliance in the vehicles. During each communication, Bosch LLC provided specific information about how Volkswagen’s vehicles functioned and unambiguously stated that the vehicles met emissions standards:

- a. In December 2009, Bosch presented CARB with a strategy to allow usage of Injection Quantity Adjustment codes in 2013 Volkswagen diesel models.⁶⁴
- b. In or around December 2012, Volkswagen and Bosch submitted separate written responses, including requested documents, to the U.S. National Highway Traffic Safety Administration in response to its investigation into high-pressure fuel pump failures in certain Affected Vehicles.⁶⁵
- c. A January 15, 2014 email from CARB to Thomas with the subject, “RE: VW response Re: V6TDI clarifications,” CARB’s Peter Ho referenced “previous discussions with Bosch,” and inquired about false detections in the field.⁶⁶

⁶³ VW-MDL2672-00530556.

⁶⁴ VW-MDL2672-07235955.

⁶⁵ VW-MDL2672-00762181.

⁶⁶ VW-MDL2672-00465156 (emphasis added). These discussions began in 2011.

- d. July 23, 2014 notes from Volkswagen referenced a phone call between Volkswagen, Bosch, CARB, and other automakers during which Bosch raised the issue of pinpointing of wire faults of NOx and particulate matter sensors with a separate control unit.⁶⁷
- e. A February 9, 2015 email from VWAG's Steffen Vieser relayed an update from Bosch GmbH [REDACTED] a discussion between CARB and Bosch LLC's [REDACTED] re: a "non-erasable permanent fault code issue of the fuel pump electronic driver stage diagnostic," which Volkswagen suggested could be fixed by a "software update" requiring Bosch's assistance, which CARB approved.⁶⁸
- f. Notes from a June 10-11, 2015 meeting between CARB and Volkswagen reference a "Bosch discussion with ARB regarding PM [particulate matter] sensor introduction with Fe-doping." The meeting notes also record that CARB told Volkswagen that CARB did not want the emission monitors in a "contrived condition."⁶⁹

225. Bosch did not disclose its knowledge of the illegal defeat device in any of these meetings or communications with U.S. regulators, or disclose that its software enabled other manufacturers to covertly exceed U.S. emissions standards.

e. Bosch keeps Volkswagen's secret safe and pushes "clean" diesel in the U.S.

226. Bosch not only kept Volkswagen's dirty secret safe, it went a step further and actively lobbied lawmakers to push "Clean Diesel" in the U.S., including making vehicles available for regulators to drive.

227. As early as 2004, Bosch announced a push to convince U.S. automakers that its diesel technology could meet tougher 2007 U.S. emission standards.⁷⁰ Its efforts ended up being a multiple-year, multi-million dollar effort, involving key players from both Bosch in Germany and Bosch in the U.S. Following the launch of its new EDC systems in 2006, Bosch hired

⁶⁷ VW-MDL2672-00887996.

⁶⁸ VW-MDL2672-00902633; VW-MDL2672-02449923.

⁶⁹ VW-MDL2672-02296983.

⁷⁰ Edmund Chew, *Bosch boosts US diesel lobbying*, Autonews (Mar. 8, 2004), <http://www.autonews.com/article/20040308/SUB/403080876/bosch-boosts-us-diesel-lobbying>.

mcapitol Managers, a lobbying firm to promote its “Clean Diesel” products on Capitol Hill and with the EPA. In Washington, DC, mcapitol Managers lobbied on Bosch’s behalf to defeat a proposal that would have favored hybrid vehicle technology over “Clean Diesel” vehicles.⁷¹

228. Bosch also coordinated studies to advance diesel technology in the U.S. In September 2006, Bosch’s [REDACTED] reached out to Volkswagen and Audi to request their participation in the “Martec Light Duty Diesel Market Opportunity Assessment.” The study’s goal was to develop coordinated strategies to accelerate advancements of light duty diesel technology in the U.S.⁷²

229. Bosch’s promotion of diesel technology specifically targeted the U.S. For example, Bosch put on “Diesel Days in California,” “Deer Conference: EGT Focus,” and “SAE World Congress in Detroit.” In 2008, Bosch LLC and VW America co-sponsored the “Future Motion Made in Germany-Second Symposium on Modern Drive Technologies” at the German Embassy in Washington, D.C., with the aim of providing a venue for “stakeholders to gain insight into the latest technology trends and engage in a vital dialogue with industry leaders and policymakers.”⁷³

230. Bosch LLC hosted multi-day conferences open to many regulators and legislators and held private meetings with regulators, in which it proclaimed extensive knowledge of the specifics of Volkswagen technology, including calibrations necessary for the vehicles to comply with emissions regulations.⁷⁴

231. For example, in April 2009, Bosch organized and hosted a two-day “California Diesel Days” event in Sacramento, California. Bosch invited a roster of lawmakers, journalists,

⁷¹ VW Dealer Complaint ¶ 118.

⁷² VW-MDL2672-06136031.

⁷³ VW-MDL2672-00234383.

⁷⁴ VW Dealer Complaint ¶ 121.

executives, regulators, and NGOs with the aim of changing perceptions of diesel from “dirty” to “clean.” The event featured vehicles as ambassadors of “Clean Diesel” technology, including a 2009 VW Jetta “green car.” The stated goals were to “generat[e] a positive perception of Clean Diesel in passenger vehicles” and to “educate California stakeholders about the immediate benefits [of] Clean Diesel passenger vehicles” in reducing emissions. A key feature of the event included “Bosch Vehicles Being Deployed.”⁷⁵ Attendees for Bosch included [REDACTED] ([REDACTED], Diesel Systems, Bosch LLC); [REDACTED] ([REDACTED], Diesel Engineering, Bosch Support Staff, Bosch GmbH); [REDACTED] ([REDACTED], Marketing, Diesel Systems, Robert Bosch LLC); and [REDACTED] ([REDACTED] External Affairs, Robert Bosch LLC). And [REDACTED] [REDACTED] for defendant Daimler AG was a presenter/participant in the conference.

232. In 2009, Bosch also became a founding member of the U.S. Coalition for Advanced Diesel Cars. One of this advocacy group’s purposes included “generating awareness to legislators and regulators on the benefits of “Clean Diesel” technology for passenger cars, through engagement in policy, regulatory and advocacy activities.”⁷⁶

233. Another example of Bosch’s U.S. lobbying is the 2009 “California Green Summit.” As part of its “Clean Diesel” partnership with Volkswagen, Bosch deployed two 2009 Jetta TDI Volkswagens to attendees with the express purpose of “Influencing California,” and inviting CARB, the Western Automotive Journalist Organization, and many others.⁷⁷

⁷⁵ *Id.* at 115-45; VW-MDL2672-03331605.

⁷⁶ VW Dealer Complaint ¶ 123.

⁷⁷ VW Dealer Complaint ¶ 124.

234. In September 2009, Bosch held a Diesel Technology Forum in California. [REDACTED] [REDACTED] (Diesel Systems/Engineering; Vehicle and Engine Laboratory of Bosch) attended, as did representatives of Daimler and other manufacturers, including VW and Audi (more specifically, VW's Stuart Johnson, R. Dorenkamp and G. Pamio, along with Juergen Peter). Following this forum, in October 2009, Mightycomm (Bosch's California lobbyist) outlined a proposal for "OEM Vehicle Placement Program targeting influential California NGOs and Regulators."⁷⁸ This memo was addressed to Bosch's [REDACTED], [REDACTED] and Bosch Diesel Systems. **Mightycomm specifically stated "[v]ehicles placed with CARB would have to be ... *newer models that can withstand possible dynamometer testing. While we do not anticipate a vehicle placed with CARB would be inspected, examined, or tested on a dynamometer, there is no assurance some CARB staff won't want to do this.*"**⁷⁹ On the other hand, Mightycomm advised not to worry about a vehicle being tested by the California Energy Commission ("CEC") "as the CEC is not equipped to conduct such inspections."⁸⁰

235. In 2010, Bosch sponsored the Virginia International Raceway with the support of the 2010 Volkswagen Jetta Cup Series. This included the 2009 "Sidewinder" which Bosch featured for its "performance exhaust system."⁸¹

236. In its lobbying on behalf of "Clean Diesel," Bosch had to continually cover up the dirty secret of the defeat device. In a January 13, 2010 memo addressed to Bosch's [REDACTED] and [REDACTED] Mightycomm noted that "Clean Diesel has been ranked the green car of the

⁷⁸ VW-MDL2672-15182932

⁷⁹ *Id.* (emphasis added).

⁸⁰ *Id.*

⁸¹ VW Dealer Complaint ¶ 126.

year” two years in a row—2009 and 2010.⁸² And yet Bosch knew the vehicles could not obtain the results being advertised without activating the defeat device.

237. Bosch’s [REDACTED] ([REDACTED]) presented on “Clean Diesel” technology before the CEC on June 19, 2013, specifically pinpointing “key influencers,” such as specific NGOs that have not traditionally engaged CARB, “who we need to reach, rally and motivate.”⁸³

238. In its efforts to promote “Clean Diesel,” Bosch acted on behalf of its global group. As an example, Bosch put on a two-day presentation on June 27-28, 2007, about meeting the demands of U.S. emission legislation, where it focused on lowering emissions in diesel vehicles. Each of the presentation’s 30 pages bears both the “Bosch” name and “Bosch Engineering GmbH” but makes no mention of Bosch LLC.⁸⁴ The aforementioned memo from Mightycomm was addressed to “Bosch Diesel Systems.” And each page of the presentation for California Diesel Days bears the label “BOSCH” in emboldened red type.⁸⁵ This is consistent with the ongoing representations that the Bosch entities, overseas and in the U.S. were “one-for-all-and-all-for-one” in promoting “Clean Diesel” technology to U.S. stakeholders.

4. Mercedes’ material omissions are actionable.

239. By manufacturing and selling the BlueTEC Clean Diesel vehicles and by failing to disclose that such vehicles emit far more pollutants than their gasoline counterparts, that emit far more pollutants than permitted under EPA standards, that emit far more pollutants on the road than in laboratory tests, and that emit far more pollutants than a reasonable consumer would expect from a clean diesel, Mercedes defrauded its customers by omission, and engaged in fraud

⁸² VW Dealer Complaint ¶ 127.

⁸³ VW-MDL2672-00885348.

⁸⁴ VW-MDL2672-05676990.

⁸⁵ VW-MDL2672-03331605.

and unfair and deceptive conduct under federal and state law. Because of Mercedes' manipulations of the BlueTEC emissions system, Mercedes *knew* that it was selling BlueTEC's that were *not* clean diesels.

240. Defendants' non-disclosure was an immediate cause of Plaintiffs' and the Class members' injuries. Each Plaintiff and Class member purchased their Affected Vehicles on the reasonable, but mistaken, belief that the Affected Vehicles were "clean diesels" as compared to gasoline vehicles and other diesels, complied with United States emissions standards, and would retain all of their operating characteristics throughout their useful life, including high fuel economy. Plaintiffs and all putative Class members selected and ultimately purchased their BlueTEC Clean Diesel vehicles, in part, because of the BlueTEC Clean Diesel system.

241. Mercedes never disclosed to Plaintiffs or the Class the facts that the Affected Vehicles had high emissions compared to gasoline vehicles and that Mercedes had designed part of the emissions reduction system to turn off during normal driving conditions.

242. Mercedes had ample opportunity to disclose these important facts given that it engaged in national advertising campaigns for the BlueTEC Clean Diesels on the Internet, in print, on the radio, and on television (see below), and distributed BlueTEC Clean Diesel vehicle brochures to dealers for provision to potential customers. Plaintiffs and the Class also would have been aware of the deception had Mercedes disclosed it to Mercedes dealerships given that each Plaintiff interacted with and received information from sales representatives at authorized Mercedes dealerships prior to purchasing their Affected Vehicles. Mercedes routinely communicates with consumers through Mercedes' authorized dealerships via product brochures, special service messages, technical service bulletins, and warranty programs (under the terms of Mercedes' express warranties, Plaintiffs and the Class need to return to Mercedes dealerships to

have warranty repairs performed). Mercedes had ample opportunity to disclose its omissions to Plaintiffs and the proposed Class through these channels and more, but failed to do so.

243. Mercedes' omissions were material. After all, Mercedes called the Affected Vehicles "BlueTEC *Clean* Diesels" (emphasis added). Had Mercedes disclosed this design, and the fact that the Affected Vehicles actually emitted pollutants at a much higher level than gasoline vehicles do, and at a much higher level than a reasonable consumer would expect from a clean diesel, and emitted unlawfully high levels of pollutants, Plaintiffs would not have purchased the Affected Vehicles, or would have paid less for them.

D. Mercedes' Affirmative Misrepresentations of the Environmental Benefits of the BlueTEC Clean Diesels and Mercedes' Promotion of the Environmental Benefits of the BlueTEC Evidences the Materiality of the Omissions

244. In addition to engaging in fraudulent omissions, Mercedes made affirmative misrepresentations about the BlueTEC Clean Diesels. Mercedes' decision to pervasively promote BlueTEC Clean Diesel vehicles as "clean" diesels, as environmentally friendly, and as the World's cleanest diesels demonstrates the materiality of the "clean diesel" message to consumers. Certainly, Mercedes would not have carefully crafted its "clean diesel" message and spent money on an advertising and promotional campaign centered around that central product claim if Mercedes did not believe that "clean diesel" was material to consumers.

1. Materiality to a reasonable consumer: Mercedes advertised and promoted BlueTEC Clean Diesels as the World's cleanest diesel vehicles.

245. Mercedes understood that promoting its BlueTEC vehicles as environmentally superior to gasoline cars would be material to a reasonable consumer interested in environmental issues with respect to a decision to purchase a car.

246. Mercedes customers expect “exceptional environmental sustainability.”⁸⁶ In a 2008 press release, Mercedes acknowledged that “the environmental sustainability of vehicles is gaining importance in the purchasing decision.”⁸⁷

247. To induce consumers to purchase BlueTEC Clean Diesel 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.”⁸⁸

248. 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 Clean Diesel 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 Clean Diesel, shuttled superstar musicians at each of the eight 2007 Live Earth climate protection concerts, two of which took place in the United States⁸⁹).

⁸⁶ 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/0-921-658901-1-1277592-1-0-0-0-0-1-0-0-0-1-0-0-0-0-0.html>.

⁸⁷ 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>.

⁸⁸ 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>.

⁸⁹ 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.html>.

- a. **Mercedes advertised and promoted BlueTEC Clean Diesel vehicles as low-emitting, because Mercedes understood it was material to a reasonable consumer.**

249. 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."⁹⁰
- b. Mercedes promises that BlueTEC Clean Diesel vehicles have "ultra-low emissions,"⁹¹ with "up to 30% lower greenhouse-gas emissions than gasoline."
- c. On its website, Mercedes depicts a BlueTEC Clean Diesel 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."⁹²
- d. Mercedes claims that BlueTEC Clean Diesel produces up to 90% fewer emissions than equivalent gas-powered vehicles,⁹³ and converts nitrous oxide emissions into "pure, earth-friendly nitrogen and water."⁹⁴
- e. In a technical explanation of BlueTEC Clean Diesel on its website, Mercedes tells consumers that it "reduces Nitrogen Oxides by up to 80%"⁹⁵
- f. Mercedes proclaims itself "#1 in CO2 emissions for luxury vehicles."⁹⁶

⁹⁰ 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/0-921-1653632-1-893475-1-0-0-0-1-0-0-0-1-0-0-0-0-0-0-0.html>.

⁹¹ *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.").

⁹² *BlueTEC Clean Diesel*, https://www.mbusa.com/mercedes/benz/green/diesel_bluetec (last visited March 29, 2016).

⁹³ *E.g.*, 2016 Sprinter Van Brochure, p. 2.

⁹⁴ *E.g.*, 2011 M-Class Brochure, p. 5.

⁹⁵ How Mercedes-Benz BlueTEC Works—Clean Diesel Technology, Mercedes-Benz Official YouTube Channel, https://youtu.be/w4T5B_UmgJo.

⁹⁶ *BlueTEC Clean Diesel*, https://www.mbusa.com/mercedes/benz/green/diesel_bluetec (last visited March 29, 2016).

- 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 Clean Diesel 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."



b. Mercedes advertised and promoted BlueTEC Clean Diesel as environmentally friendly, because Mercedes understood it was material to a reasonable consumer.

250. 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.”⁹⁷ Indeed, the company relishes its message that it plays an industry leading role in advancing “green” technologies like BlueTEC Clean Diesel.

⁹⁷ Advertisement created by Jung von Matt, Swiss creative agency, available at <http://www.jvm.ch/en/arbeiten/kampagne/mercedes-benz/bluetec-1/print>.

⁹⁸ *Mercedes-Benz & The Environment*, <https://www.mbusa.com/mercedes/benz/green#main> (last visited March 31, 2016).

251. BlueTEC is part of a line-up of Mercedes technologies that it says are “green.”⁹⁹ Mercedes widely disseminates advertisements, promotional campaigns, and public statements throughout the United States to induce the purchase of BlueTEC Clean Diesel vehicles by customers that are concerned about the environment. For example:

- a. Mercedes calls its BlueTEC engine, “[e]arth-friendly, around the world.”¹⁰⁰
- 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.”¹⁰¹
- 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.”¹⁰²
- 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.”¹⁰³
- e. Mercedes strategically placed its BlueTEC Clean Diesel 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.”¹⁰⁴
- f. A 2009 website designed for Mercedes-Benz pictured a 2009 ML320 BlueTEC Clean Diesel driving in the sky through clouds, with the title, “Why

⁹⁹ *Mercedes-Benz & The Environment*, <https://www.mbusa.com/mercedes/benz/green#main> (last visited March 31, 2016).

¹⁰⁰ *BlueTEC Clean Diesel*, https://www.mbusa.com/mercedes/benz/green/diesel_bluetec (last visited March 29, 2016).

¹⁰¹ Studio Dialog, Video for Mercedes-Benz BlueTEC, *available at* <https://vimeo.com/8989688>.

¹⁰² How Mercedes-Benz BlueTEC Works—Clean Diesel Technology, Mercedes-Benz Official YouTube Channel, https://youtu.be/w4T5B_UmgJo.

¹⁰³ 2016 Sprinter Van Brochure, p. 2.

¹⁰⁴ *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/#.

you should go BLUE if you want to go green.”¹⁰⁵ 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.

c. Mercedes advertised and promoted BlueTEC Clean Diesel as meeting and exceeding compliance with U.S. emissions standards in all 50 states, because Mercedes understood it was material to a reasonable consumer.

252. 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.”¹⁰⁶
- 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.¹⁰⁷
- 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.”¹⁰⁸

2. Mercedes Misrepresented the BlueTEC Clean Diesel

253. Mercedes’ manipulations of the BlueTEC Clean Diesel emission controls puts the lie to Mercedes’ claims that BlueTEC Clean Diesel is “the world’s cleanest diesel passenger vehicle” with “ultralow emissions.” Mercedes misrepresents the emissions performance of its vehicles equipped with BlueTEC engines because of its manipulations that limit emission controls in normal driving conditions.

¹⁰⁵ Portfolio of Chris Lacey, Mercedes-Benz BlueTEC, <http://www.chrislacey.net/354/uncategorized/mercedes-benz-bluetec>.

¹⁰⁶ *Mercedes-Benz & The Environment*, <http://www.mbusa.com/mercedes/benz/green#module-2> (last visited March 31, 2016).

¹⁰⁷ 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>.

¹⁰⁸ Life Cycle, Environmental Certificate for the E-Class, p. 6 (April 2009).

E. The Damage

254. 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.”

255. 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.

256. 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.

257. 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

258. 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.

259. 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.

260. 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.

261. 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

262. 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.

263. 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

264. 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.

265. 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.

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

VII. CLASS ALLEGATIONS

267. 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 RICO 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 Nationwide Unfair and Deceptive Practices Act 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 Indiana Subclass

All persons or entities in the state of Indiana 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 Mississippi Subclass

All persons or entities in the state of Mississippi 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 South Carolina Subclass

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

The 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.

268. 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.

269. 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.

270. 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.

271. **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.

272. **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 and Bosch 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 and Bosch knew about the defeat device and, if so, how long have they known;

g) Whether Bosch designed and manufactured a defeat device;

h) Whether Bosch supplied the defeat device to Mercedes with the knowledge that Mercedes would use it in the production of Affected Vehicles;

i) Whether Bosch acted in concert with Mercedes and aided and abetted Mercedes' fraud;

f) Whether Mercedes designed, manufactured, marketed, and distributed Affected Vehicles with defective or otherwise inadequate emission controls;

g) Whether Mercedes' and Bosch's conduct violates RICO and consumer protection statutes and constitutes fraudulent concealment as asserted herein;

h) Whether Plaintiffs and the other Class members overpaid for their Affected Vehicles and/or did not receive the benefit of the bargain;

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

273. **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.

274. **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.

275. **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.

276. **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.

VIII. CLAIMS

A. Claims Brought on Behalf of the Nationwide RICO Class

COUNT I VIOLATIONS OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO) VIOLATION OF 18 U.S.C. § 1962(c) - (d)

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

278. Plaintiffs bring this Count individually and on behalf of the Nationwide RICO Class against Defendants Mercedes-Benz USA, LLC, Daimler AG, Robert Bosch GmbH, and Robert Bosch LLC (collectively, “RICO Defendants”).

279. The RICO Defendants are all “persons” under 18 U.S.C. § 1961(3) because they are capable of holding, and do hold, “a legal or beneficial interest in property.”

280. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” Section 1962(d), in turn, makes it unlawful for “any person to conspire to violate.”

281. For many years now, the RICO Defendants have aggressively sought to increase the sales of Affected Vehicles in an effort to bolster revenue, augment profits and increase Mercedes’ share of the diesel vehicle market. Finding it impossible to achieve their goals lawfully, however, the RICO Defendants resorted instead to orchestrating a fraudulent scheme and conspiracy. In particular, the RICO Defendants, along with other entities and individuals, created and/or participated in the affairs of an illegal enterprise (“Emissions Fraud Enterprise”) whose direct purpose was to deceive the regulators and the public into believing the Affected

Vehicles were “clean diesels.” As explained in greater detail below, the RICO Defendants’ acts in furtherance of the Emissions Fraud Enterprise violate § 1962(c) and (d).

1. The members of the emissions fraud enterprise.

282. Upon information and belief, the Emissions Fraud Enterprise consisted of the following entities and individuals: Mercedes-Benz USA, LLC, Daimler AG, Robert Bosch GmbH, and Robert Bosch LLC.

283. Robert Bosch GmbH and Robert Bosch LLC (together, “Bosch” or “Bosch Defendants”) tested, manufactured, and sold the electronic control module (“ECM”) that managed the emissions control system used by Mercedes in the Affected Vehicles. This particular ECM is more formally referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17”).¹⁰⁹

284. Defendant Bosch GmbH is a multinational engineering and electronics company headquartered in Gerlingen, Germany, which has hundreds of subsidiaries and companies. It wholly owns defendant Bosch LLC, a Delaware limited liability company headquartered in Farmington Hills, Michigan. As explained above, Bosch’s sectors and divisions are grouped by subject matter, not location. The Mobility Solutions (formerly Automotive Technology) is the Bosch sector at issue, particularly its Diesel Services division, and it encompasses employees of Bosch GmbH and Bosch LLC. These individuals were responsible for the design, manufacture, development, customization, and supply of the defeat device to Mercedes for use in the Affected Vehicles.

285. Bosch worked with Mercedes, Volkswagen, and Fiat Chrysler (FCA) to develop and implement a specific and unique set of software algorithms to surreptitiously evade emissions regulations. Bosch customized their EDC Unit 17s for installation in the Affected

¹⁰⁹ http://www.bosch-presse.de/presseforum/details.htm?txtID=7421&tk_id=108.

Vehicles with unique software code to detect when it was undergoing emissions testing, as described above, and did so for other vehicles with defeat devices in Volkswagen and FCA vehicles.¹¹⁰

286. Bosch's conduct with respect to Volkswagen, outlined below, adds plausibility to its participation in the enterprise herein. For example, Bosch was well aware that the EDC Unit 17 would be used by Volkswagen to cheat on emissions testing. As described above, on June 2, 2008, Bosch's [REDACTED] wrote to his counterparts at Volkswagen, seeking legal indemnification from Volkswagen for the "expanded use" of the EDC Unit 17s which it called a "defeat device."¹¹¹ [REDACTED] explained that "[t]he usage of a defeat device is prohibited pursuant to ... US Law (CARB/EPA) (see definition footnote 2),"¹¹² and warned that the agreed-to software modifications would allow "the certified dataset [to be] replaced with another, possibly non-certified data set," which could cause "the vehicle's general operating license (registration) [to] become void."¹¹³ Volkswagen rebuffed Bosch's request, yet Bosch nonetheless shipped the modified software to Volkswagen for use in the Affected Vehicles for another seven years. Bosch was also critical to the concealment of the defeat device in communications with U.S. regulators and went even further to actively lobby U.S. lawmakers on behalf of Volkswagen and its "Clean Diesel" vehicles.

287. EDC Unit 17 could not effectively lower NO_x emissions to legal levels during normal operating conditions. In order to pass the emissions test, then, EDC Unit 17 is equipped with a "defeat device," which is software that allows the vehicle to determine whether it is being operated under normal conditions or testing conditions.

¹¹⁰ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

¹¹¹ VW-MDL2672-02570091 (English translation).

¹¹² *Id.* at 92.

¹¹³ *Id.* at 93.

288. As was publicly reported, the Bosch Defendants, seeking to conceal their involvement in the unlawful Emissions Fraud Enterprise, sent a letter to Volkswagen AG in 2007 stating that Volkswagen Diesels *could not be lawfully operated* if the LNT or SCR after-treatment system was disabled.¹¹⁴ The exact same logic applies to the Mercedes Affected Vehicles.

289. Indeed, notwithstanding their knowledge that the Volkswagen Diesels *could not be lawfully operated* if the emissions system was disabled, the Bosch Defendants, driven to cement their position as a leading supplier of diesel emissions equipment, went on to sell approximately *eleven million* EDC Unit 17s to Volkswagen over an eight year period, and sold hundreds of thousands of EDC Unit 17s to Mercedes for use in Affected Vehicles.¹¹⁵

290. The persons and entities described in the preceding section are members of and constitute an “association-in-fact” enterprise.

291. At all relevant times, the Emissions Fraud Enterprise: (a) had an existence separate and distinct from each Defendant; (b) was separate and distinct from the pattern of racketeering in which the RICO Defendants engaged; and (c) was an ongoing organization consisting of legal entities, including the Mercedes Defendants, the Bosch Defendants, and other entities and individuals associated for the common purpose of designing, manufacturing, distributing, testing, and selling the Affected Vehicles through fraudulent COCs and EOs, false emissions tests, deceptive and misleading marketing and materials, and deriving profits and revenues from those activities. Each member of the Emissions Fraud Enterprise shared in the

¹¹⁴ Stef Shrader, *Feds Are Now Investigating Volkswagen Supplier Bosch Over Dieselgate*, Jalopnik (Nov. 19, 2015), <http://jalopnik.com/feds-are-now-investigating-volkswagen-supplier-bosch-ov-1743624448>.

¹¹⁵ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from increased sales revenue generated by the scheme to defraud consumers and franchise dealers alike nationwide.¹¹⁶

292. The Emissions Fraud Enterprise functioned by selling vehicles and component parts to the consuming public. Many of these products are legitimate, including vehicles that do not contain defeat devices. However, the RICO Defendants and their co-conspirators, through their illegal Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent scheme to increase revenue for Defendants and the other entities and individuals associated-in-fact with the Enterprise's activities through the illegal scheme to sell the Affected Vehicles.

293. The Emissions Fraud Enterprise engaged in, and its activities affected interstate and foreign commerce, because it involved commercial activities across state boundaries, such as the marketing, promotion, advertisement and sale or lease of the Affected Vehicles throughout the country, and the receipt of monies from the sale of the same.

294. Within the Emissions Fraud Enterprise, there was a common communication network by which co-conspirators shared information on a regular basis. The Emissions Fraud Enterprise used this common communication network for the purpose of manufacturing, marketing, testing, and selling the Affected Vehicles to the general public nationwide.

295. Each participant in the Emissions Fraud Enterprise had a systematic linkage to each other through corporate ties, contractual relationships, financial ties, and continuing coordination of activities. Through the Emissions Fraud Enterprise, the RICO Defendants functioned as a continuing unit with the purpose of furthering the illegal scheme and their common purposes of increasing their revenues and market share, and minimizing losses.

¹¹⁶ Volkswagen sold more Affected Vehicles by utilizing an emissions control system that was cheaper than SCRs, all the while charging consumers a premium for purportedly "clean," "environmentally friendly" and "fuel efficient" vehicles. Bosch, in turn, sold more EDC Units because Volkswagen manufactured and sold more Affected Vehicles.

296. The RICO Defendants participated in the operation and management of the Emissions Fraud Enterprise by directing its affairs, as described herein. While the RICO Defendants participated in, and are members of, the enterprise, they have a separate existence from the enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers, directors, employees, individual personhood, reporting requirements, and financial statements.

297. Mercedes exerted substantial control and participated in the affairs of the Emissions Fraud Enterprise by:

- a. Designing the Affected Vehicles with defeat devices;
- b. Failing to correct or disable the defeat devices when warned;
- c. Manufacturing, distributing, and selling the Affected Vehicles that emitted greater pollution than allowable under the applicable regulations;
- d. Misrepresenting and omitting (or causing such misrepresentations and omissions to be made) vehicle specifications on COC and EO applications;
- e. Introducing the Affected Vehicles into the stream of U.S. commerce without a valid EPA COC and/or CARB EO;
- f. Concealing the existence of the defeat devices and the unlawfully high emissions from regulators and the public;
- g. Persisting in the manufacturing, distribution, and sale of the Affected Vehicles even after questions were raised about the emissions testing and discrepancies concerning the same;
- h. Misleading government regulators as to the nature of the defeat devices and the defects in the Affected Vehicles;
- i. Misleading the driving public as to the nature of the defeat devices and the defects in the Affected Vehicles;
- j. Designing and distributing marketing materials that misrepresented and concealed the defect in the vehicles;

- k. Otherwise misrepresenting or concealing the defective nature of the Affected Vehicles from the public and regulators; and
- l. Illegally selling and/or distributing the Affected Vehicles; collecting revenues and profits from the sale of such products; and ensuring that the other RICO Defendants and unnamed co-conspirators complied with the fraudulent scheme.

298. Bosch also participated in, operated and/or directed the Emissions Fraud Enterprise. Bosch participated in the fraudulent scheme by manufacturing, installing, testing, modifying, and supplying the EDC Unit 17 which operated as a “defeat device” in the Affected Vehicles. Bosch exercised tight control over the coding and other aspects of the defeat device software and closely collaborated with Mercedes to develop, customize, and calibrate the defeat devices. Additionally, Bosch continuously cooperated with Mercedes to ensure that the EDC Unit 17 was fully integrated into the Affected Vehicles. Bosch also participated in the affairs of the Enterprise by concealing the defeat devices on U.S. documentation and in communications with U.S. regulators. Bosch collected tens of millions of dollars in revenues and profits from the hidden defeat devices installed in the Affected Vehicles.

299. Without the RICO Defendants’ willing participation, including Bosch’s active involvement in developing and supplying the critical defeat devices for the Affected Vehicles, the Emissions Fraud Enterprise’s scheme and common course of conduct would not have been successful.

300. The RICO Defendants directed and controlled the ongoing organization necessary to implement the scheme at meetings and through communications of which Plaintiffs cannot fully know at present, because such information lies in the Defendants’ and others’ hands.

301. The members of the Emissions Fraud Enterprise all served a common purpose; namely, to outsell their law-abiding competitors and increase their revenues through the sale of

as many Affected Vehicles (including the emissions components made and sold by Bosch) as possible. Each member of the Emissions Fraud Enterprise shared the bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from increased sales revenue generated by the scheme to defraud. Mercedes sold more Affected Vehicles by utilizing an emissions control system that was cheaper to install and allowed for generous performance and efficiency tuning, all the while charging consumers a premium for purportedly “clean,” “environmentally friendly” and “fuel efficient” Affected Vehicles. The Bosch Defendants, in turn, sold more EDC Units because Mercedes manufactured and sold more Affected Vehicles. The RICO Defendants achieved their common purpose by repeatedly misrepresenting and concealing the nature of the Affected Vehicles and the ability of the emissions control systems (including the Bosch-supplied parts) to effectively reduce toxic emissions during normal operating conditions.

2. The predicate acts.

302. To carry out, or attempt to carry out the scheme to defraud, the RICO Defendants conducted or participated in the conduct of the affairs of the Emissions Fraud Enterprise through a pattern of racketeering activity that employed the use of the mail and wire facilities, in violation of 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud).

303. Specifically, the RICO Defendants participated in the scheme to defraud by using mail, telephone, and the Internet to transmit writings travelling in interstate or foreign commerce.

304. The RICO Defendants’ use of the mails and wires include, but are not limited to, the transmission, delivery, or shipment of the following by the RICO Defendants or third parties that were foreseeably caused to be sent as a result of Defendants’ illegal scheme:

- a. Application for certificates submitted to the EPA and CARB;
- b. The Affected Vehicles themselves;
- c. Component parts for the defeat devices;

- d. Essential hardware for the Affected Vehicles;
- e. Falsified emission tests;
- f. Fraudulently-obtained EPA COCs and CARB EOs;
- g. Vehicle registrations and plates as a result of the fraudulently-obtained EPA COCs and CARB EOs;
- h. Documents and communications that facilitated the falsified emission tests;
- i. False or misleading communications intended to lull the public and regulators from discovering the defeat devices and/or other auxiliary devices;
- j. Sales and marketing materials, including advertising, websites, product packaging, brochures, and labeling, which misrepresented and concealed the true nature of the Affected Vehicles;
- k. Documents intended to facilitate the manufacture and sale of the Affected Vehicles, including bills of lading, invoices, shipping records, reports and correspondence;
- l. Documents to process and receive payment for the Affected Vehicles by unsuspecting franchise dealers, including invoices and receipts;
- m. Payments to Bosch;
- n. Deposits of proceeds; and
- o. Other documents and things, including electronic communications.

305. The RICO Defendants utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the omissions, false pretense, and misrepresentations described therein.

306. The RICO Defendants also used the internet and other electronic facilities to carry out the scheme and conceal the ongoing fraudulent activities. Specifically, Mercedes made misrepresentations about the Affected Vehicles on their websites, YouTube, and through ads online, all of which were intended to mislead regulators and the public about the fuel efficiency, emissions standards, and other performance metrics.

307. The RICO Defendants also communicated by U.S. Mail, by interstate facsimile, and by interstate electronic mail with various other affiliates, regional offices, divisions, dealerships and other third-party entities in furtherance of the scheme.

308. The mail and wire transmissions described herein were made in furtherance of Defendants' scheme and common course of conduct to deceive regulators and consumers and lure consumers into purchasing the Affected Vehicles, which Defendants knew or recklessly disregarded as emitting illegal amounts of pollution, despite their advertising campaign that the Affected Vehicles were "clean" diesel cars.

309. Many of the precise dates of the fraudulent uses of the U.S. Mail and interstate wire facilities have been deliberately hidden, and cannot be alleged without access to Defendants' books and records. However, Plaintiffs have described the types of, and in some instances, occasions on which the predicate acts of mail and/or wire fraud occurred. They include thousands of communications to perpetuate and maintain the scheme, including the things and documents described in the preceding paragraphs.

310. The RICO Defendants have not undertaken the practices described herein in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d), the RICO Defendants conspired to violate 18 U.S.C. § 1962(c), as described herein. Various other persons, firms and corporations, including third-party entities and individuals not named as defendants in this Complaint, have participated as co-conspirators with the RICO Defendants in these offenses and have performed acts in furtherance of the conspiracy to increase or maintain revenues, increase market share, and/or minimize losses for the Defendants and their unnamed co-conspirators throughout the illegal scheme and common course of conduct.

311. The RICO Defendants aided and abetted others in the violations of the above laws, thereby rendering them indictable as principals in the 18 U.S.C. §§ 1341 and 1343 offenses.

312. To achieve their common goals, the RICO Defendants hid from the general public the unlawfulness and emission dangers of the Affected Vehicles and obfuscated the true nature of the defect even after regulators raised concerns. The RICO Defendants suppressed and/or ignored warnings from third parties, whistleblowers, and governmental entities about the discrepancies in emissions testing and the defeat devices present in the Affected Vehicles.

313. The RICO Defendants and each member of the conspiracy, with knowledge and intent, have agreed to the overall objectives of the conspiracy and participated in the common course of conduct to commit acts of fraud and indecency in designing, manufacturing, distributing, marketing, testing, and/or selling the Affected Vehicles (and the defeat devices contained therein).

314. Indeed, for the conspiracy to succeed each of the RICO Defendants and their co-conspirators had to agree to implement and use the similar devices and fraudulent tactics—specifically complete secrecy about the defeat devices in the Affected Vehicles.

315. The RICO Defendants knew and intended that government regulators, as well as Plaintiff and Class members, would rely on the material misrepresentations and omissions made by them about the Affected Vehicles. The RICO Defendants knew and intended Plaintiffs and the Class would incur costs and damages as a result. As fully alleged herein, Plaintiffs and the Class relied upon Defendants' representations and omissions that were made or caused by them. Plaintiffs' reliance is made obvious by the fact that they purchased or leased tens of thousands of vehicles that never should have been introduced into the U.S. stream of commerce and whose

worth is far less. In addition, the EPA, CARB, and other regulators relied on the misrepresentations and material omissions made or caused to be made by the RICO Defendants; otherwise Mercedes could not have obtained valid COCs and EOs to sell the Affected Vehicles.

316. The RICO Defendants' conduct in furtherance of this scheme was intentional. Plaintiffs and the Class were harmed as a result of the RICO Defendants' intentional conduct. Plaintiffs, the Class, regulators and consumers, among others, relied on the RICO Defendants' material misrepresentations and omissions.

317. As described herein, the RICO Defendants engaged in a pattern of related and continuous predicate acts for many years. The predicate acts constituted a variety of unlawful activities, each conducted with the common purpose of defrauding Plaintiffs and other Class members and obtaining significant monies and revenues from them and through them while providing Affected Vehicles worth significantly less than the invoice price paid. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

318. The predicate acts all had the purpose of generating significant revenue and profits for the RICO Defendants at the expense of Plaintiffs and the Class, and consumers. The predicate acts were committed or caused to be committed by the RICO Defendants through their participation in the Emissions Fraud Enterprise and in furtherance of its fraudulent scheme, and were interrelated in that they involved obtaining Plaintiffs' and Class members' funds, artificially inflating the brand and dealership goodwill values, and avoiding the expenses associated with remediating the Affected Vehicles.

319. During the design, manufacture, testing, marketing and sale of the Affected Vehicles, the RICO Defendants shared technical, marketing and financial information that

plainly revealed the emissions control systems in the Affected Vehicles as the ineffective, illegal and fraudulent piece of technology they were and are. Nevertheless, the RICO Defendants shared and disseminated information that deliberately represented Affected Vehicles as “clean,” “environmentally friendly,” and “fuel efficient.”

320. By reason of and as a result of the conduct of the RICO Defendants, and, in particular, its pattern of racketeering activity, Plaintiffs and the Class have been injured in multiple ways, including, but not limited to:

- a. Overpayment for Affected Vehicles, in that Plaintiffs and the Class believed they were paying for vehicles that were clean diesels and met certain emission and fuel efficiency standards and obtained vehicles that were not clean diesels and were not legal to sell in the U.S.; and
- b. The value of the Affected Vehicles has diminished, thus reducing their sale and resale value.

321. The RICO Defendants’ violations of 18 U.S.C. § 1962(c) and (d) have directly and proximately caused injuries and damages to Plaintiffs and the Class, and Plaintiffs and the Class are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys’ fees pursuant to 18 U.S.C. § 1964(c). Each of the RICO defendants knew, understood and intended for members of the Class to purchase the Affected Vehicles, and knew, understood, and foresaw that revelation of the truth would injure members of the Class.

B. Claims Brought on Behalf of the Nationwide Unfair and Deceptive Practices Act 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.*)**

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

323. Plaintiffs bring this Count on behalf of the Nationwide Unfair and Deceptive Practices Class and New Jersey Subclass.

324. The New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.* (“NJ CFA”), declares that “[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, 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 merchandise or real estate . . . whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice....” N.J.S.A. §§ 56:8-2.

325. Mercedes is a “person” pursuant to N.J.S.A. § 56:8-1(d).

326. The Affected Vehicles are considered “merchandise,” which includes any objects, goods and commodities offered, directly or indirectly, to the public for sale. N.J.S.A. § 56:8-1(c).

327. “Sale” includes “any sale, rental or distribution, offer for sale, rental or distribution or attempt directly or indirectly to sell, rent or distribute,” N.J.S.A. § 56:8-1(e), and therefore includes Mercedes’ sale of Affected Vehicles.

328. 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 and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above, all with the intent that consumers rely upon these omissions of material facts. Accordingly, Mercedes has used an unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, and the knowing, 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 merchandise. 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.

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

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

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

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

333. 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.

334. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

335. 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, would have paid less, 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.

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

337. 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.

338. 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.

339. 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

FRAUDULENT CONCEALMENT (BASED ON NEW JERSEY LAW)

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

341. Plaintiffs bring this Count on behalf of the Nationwide Unfair and Deceptive Practices Class and New Jersey Subclass.

342. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

343. 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, and would perform and operate properly when driven in normal usage.

344. Mercedes knew these representations were false when made.

345. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

346. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

347. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

348. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

349. 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.

350. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

351. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

352. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

353. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

354. 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.

355. 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, would have paid less, 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.

356. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

357. 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, 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.

358. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

359. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

360. Defendants' 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 Defendants. Defendants' 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 Alabama Subclass

COUNT I

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

361. Plaintiffs Jonathan Mose and Walter Louis, Jr. (Plaintiffs for purposes of all Alabama Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

362. Plaintiffs bring this Count on behalf of the Alabama Subclass.

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

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

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

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

367. 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.

368. 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 Affected Vehicles emitted far more pollution than gasoline powered vehicles, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices, including representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; advertising the 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.

369. 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, that the Affected Vehicles emitted far more pollution than gasoline powered vehicles, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above.

370. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

372. Mercedes knew or should have known that its conduct violated the Alabama DTPA.

373. 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.

374. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

375. 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, would have paid less, 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.

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

377. 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.

378. 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.

379. Pursuant to ALA. CODE § 8-19-10(a), 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) \$100 for each Plaintiffs and each Subclass member, in addition to treble damages.

380. Plaintiffs and the Subclass also seek declaratory relief, attorneys' fees, and any other just and proper relief available under the Alabama DTPA.

381. Plaintiffs have made a demand in satisfaction of ALA. CODE § 8-19-3.

COUNT II

FRAUDULENT CONCEALMENT

(BASED ON ALABAMA LAW)

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

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

384. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles, and higher than a reasonable consumer would expect from a clean diesel, 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.

385. 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, and would perform and operate properly when driven in normal usage.

386. Mercedes knew these representations were false when made.

387. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

388. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, and were unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

389. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

390. The truth about the defective emissions controls and Mercedes' manipulations of those controls, 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.

391. 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.

392. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

393. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

394. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the

Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

395. 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 which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

396. 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.

397. 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, would have paid less, 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.

398. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the

bargain, 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, 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.

399. 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, 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.

400. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

401. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

402. Defendants' 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 Defendants. Defendants' 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 Arizona Subclass

COUNT I

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

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

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

405. 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 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 and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, 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.

406. In purchasing or leasing the Affected Vehicles, Plaintiff 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

407. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

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

412. 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.

413. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

414. 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, would have paid less, 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.

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

416. 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.

417. 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.

418. 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.

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

COUNT II

FRAUDULENT CONCEALMENT (BASED ON ARIZONA LAW)

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

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

422. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes

acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

423. 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, and would perform and operate properly when driven in normal usage.

424. Mercedes knew these representations were false when made.

425. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

426. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

427. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

428. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

429. 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.

430. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

431. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

432. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

433. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

434. 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.

435. 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, would have paid less, 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.

436. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

437. 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, 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.

438. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

439. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

440. Defendants' 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 Defendants. Defendants' 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 California Subclass

COUNT I

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

441. 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.

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

443. 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."

444. 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 the Affected Vehicles as reduced emissions vehicles possessing functional and defect-free diesel engine systems;

vii. By violating other California laws, including California consumer protection laws.

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

446. 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 far more pollution than a reasonable consumer would expect from a clean diesel, as described above.

447. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

449. 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.

450. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

451. 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, would have paid less, 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.

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

453. 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.

454. 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.

455. 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.

456. 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.

457. 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.*)

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

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

460. 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."

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

462. 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).

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

464. 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.

465. 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; and
- vi. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in accordance with a previous representation when they have not.

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

467. 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 far more pollution than a reasonable consumer would expect from a clean diesel, as described above.

468. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

470. 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.

471. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

472. 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, would have paid less, 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.

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

474. 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.

475. 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.

476. 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.

477. 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, they would not have purchased or leased the Affected Vehicles or would not have paid the prices they paid.

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

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

480. 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.*)

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

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

483. 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.”

484. 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.

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

486. 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, and environmental-friendliness 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. 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.

487. 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.

488. 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

FRAUDULENT CONCEALMENT (BASED ON CALIFORNIA LAW)

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

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

491. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered

vehicles, and higher than a reasonable consumer would expect from a clean diesel, 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.

492. 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, and would perform and operate properly when driven in normal usage.

493. Mercedes knew these representations were false when made.

494. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

495. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel and, were unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

496. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions, 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

497. The truth about the defective emissions controls and Mercedes' manipulations of those controls, 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.

498. 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.

499. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

500. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

501. Mercedes had a duty to disclose the emissions defect and, defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles are material concerns to a consumer. 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 vehicles.

502. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

503. 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.

504. 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, would have paid less, 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.

505. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

506. 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, 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.

507. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

508. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

509. Defendants' 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 Defendants. Defendants' 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 Colorado Subclass

COUNT I

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

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

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

512. 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).

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

514. 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.

515. 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 Affected Vehicles emitted far more pollution than gasoline powered vehicles, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described

above. Accordingly, Mercedes engaged in unfair and deceptive trade practices, including representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; advertising the 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.

516. 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, that the Affected Vehicles emitted far more pollution than gasoline powered vehicles, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above.

517. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

521. 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.

522. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

523. 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, would have paid less, 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.

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

525. 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.

526. 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.

527. 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.

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

COUNT II

FRAUDULENT CONCEALMENT (BASED ON COLORADO LAW)

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

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

531. 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 and higher than a reasonable consumer would expect from a clean diesel, 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.

532. 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, and would perform and operate properly when driven in normal usage.

533. Mercedes knew these representations were false when made.

534. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

535. 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 and emitted pollutants at a much higher rate than gasoline powered

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

536. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

537. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

538. 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.

539. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they

believe 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.

540. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

541. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

542. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

543. 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.

544. 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, would have paid less, 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.

545. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

546. 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, 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.

547. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

548. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

549. Defendants' 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 Defendants. Defendants'

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 Connecticut Subclass

COUNT I

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

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

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

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

553. 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 from a clean diesel, 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.

554. 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.

555. 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 and that the emissions controls were defective, as described above.

556. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

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

561. 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.

562. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

563. 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, would have paid less, 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.

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

565. 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.

566. 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.

567. 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.

568. 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

FRAUDULENT NON-DISCLOSURE (BASED ON CONNECTICUT LAW)

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

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

571. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

572. 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, and would perform and operate properly when driven in normal usage.

573. Mercedes knew these representations were false when made.

574. The Affected Vehicles purchased or leased by Plaintiff 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 from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

575. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

576. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

577. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

578. 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.

579. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they

believe 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.

580. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

581. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

582. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

583. 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.

584. 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, would have paid less, 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' 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.

585. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

586. 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, 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.

587. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

588. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

589. Defendants' 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 Defendants. Defendants'

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 Delaware Subclass

COUNT I

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

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

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

592. Mercedes is a “person” within the meaning of 6 DEL. CODE § 2511(7).

593. 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, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, 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.

594. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

595. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

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

600. 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.

601. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

602. 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, would have paid less, 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.

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

604. 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.

605. 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.

606. 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.

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

COUNT II

FRAUDULENT CONCEALMENT (BASED ON DELAWARE LAW)

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

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

610. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes

acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

611. 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, and would perform and operate properly when driven in normal usage.

612. Mercedes knew these representations were false when made.

613. The Affected Vehicles purchased or leased by Plaintiff 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 from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

614. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

615. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive

616. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

617. 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.

618. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

619. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

620. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

621. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

622. 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.

623. 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, would have paid less, 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.

624. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

625. 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, 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.

626. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

627. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

628. Defendants' 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 Defendants. Defendants' 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 Florida Subclass

COUNT I

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

629. Plaintiffs Dedrick Watkins, Stephen Carroll, and Geoffrey C. Cunningham (Plaintiffs for purposes of all Florida Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

630. Plaintiffs bring this Count on behalf of the Florida Subclass.

631. Plaintiffs and the Subclass are “consumers” within the meaning of Florida Unfair and Deceptive Trade Practices Act (“Florida UDTPA”), FLA. STAT. § 501.203(7).

632. Mercedes engaged in “trade or commerce” within the meaning of FLA. STAT. § 501.203(8).

633. 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, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, 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.

634. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

635. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

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

640. 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.

641. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

642. 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, would have paid less, 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.

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

644. 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.

645. 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.

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

COUNT II

FRAUDULENT CONCEALMENT (BASED ON FLORIDA LAW)

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

648. Plaintiffs bring this Count on behalf of the Florida Subclass.

649. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

650. 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, and would perform and operate properly when driven in normal usage.

651. Mercedes knew these representations were false when made.

652. 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 from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

653. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

654. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

655. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

656. 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.

657. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

658. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

659. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

660. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

661. 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.

662. 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, would have paid less, 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.

663. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

664. 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, 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.

665. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

666. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

667. Defendants' 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 Defendants. Defendants' 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 Georgia Subclass

COUNT I

**VIOLATION OF GEORGIA’S FAIR BUSINESS PRACTICES ACT
(GA. CODE ANN. § 10-1-390, *et seq.*)**

668. 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.

669. 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 and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in unfair or deceptive acts or practices by representing that the Affected Vehicles have, 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.

670. 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 far more pollution than a reasonable consumer would expect from a clean diesel, as described above.

671. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

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

676. 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.

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, and that these Affected Vehicles were defective and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

678. 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, would have paid less, 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.

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

680. 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.

681. 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.

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

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

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

685. 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

FRAUDULENT CONCEALMENT (BASED ON GEORGIA LAW)

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

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

688. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

689. 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, and would perform and operate properly when driven in normal usage.

690. Mercedes knew these representations were false when made.

691. 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 from a clean diesel are and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

692. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Class members relied on Mercedes' material omissions and

representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

693. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

694. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

695. 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.

696. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

697. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

698. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

699. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

700. 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 Affected Vehicles.

701. 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, would have paid less, 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.

702. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

703. 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, 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.

704. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

705. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

706. Defendants' 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 Defendants. Defendants'

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 Idaho Subclass

COUNT I

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

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

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

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

710. Mercedes’ acts or practices as set forth above occurred in the conduct of “trade” or “commerce” under IDAHO CIV. CODE § 48-602(2).

711. 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. and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above.

712. 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 higher levels of pollution than expected by a reasonable consumer from a clean diesel, as described above.

713. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

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

718. 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.

719. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

720. 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, would have paid less, 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.

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

722. 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.

723. 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.

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

725. 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

FRAUDULENT CONCEALMENT (BASED ON IDAHO LAW)

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

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

728. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

729. 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, and would perform and operate properly when driven in normal usage.

730. Mercedes knew these representations were false when made.

731. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

732. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

733. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

734. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

735. 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.

736. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

737. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

738. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

739. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

740. 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.

741. 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, would have paid less, 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.

742. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

743. 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, 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.

744. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

745. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

746. Defendants' 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 Defendants. Defendants' 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 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)**

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

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

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

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

751. 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.

752. 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 and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, 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.

753. 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 higher levels of pollution than expected by a reasonable consumer, as described above.

754. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

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

759. 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.

760. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

761. 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, would have paid less, 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.

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

763. 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.

764. 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.

765. 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.

766. Plaintiff also seeks punitive damages, attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1, *et seq.*

COUNT II

FRAUDULENT CONCEALMENT (BASED ON ILLINOIS LAW)

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

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

769. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

770. 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, and would perform and operate properly when driven in normal usage.

771. Mercedes knew these representations were false when made.

772. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

773. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

774. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

775. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

776. 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.

777. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

778. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

779. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

780. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

781. 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.

782. 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, would have paid less, 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.

783. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

784. 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, 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.

785. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

786. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

787. Defendants' 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 Defendants. Defendants' 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 Indiana Subclass

COUNT I

**VIOLATIONS OF THE INDIANA DECEPTIVE CONSUMER SALES ACT
(INDIANA CODE § 24-5-0.5-3)**

788. Plaintiffs Devin Downs and Andrew H. Rubey (Plaintiffs for purposes of all Indiana Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

789. Plaintiffs bring this Count on behalf of the Indiana Subclass.

790. Defendants are "persons" within the meaning of Indiana Code § 24-5-.05-2(2) and a "supplier" within the meaning of Ind. Code § 24-5-0.5-2(a)(3).

791. Plaintiffs and the Indiana Subclass members' purchase of Affected Vehicles are "consumer transactions" within the meaning of Ind. Code § 24-5-0.5-2(a)(1).

792. Indiana's Deceptive Consumer Sales Act (the "Indiana DCSA") prohibits a person from engaging in a "deceptive act," which includes representing: "(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection it does not have; (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and the supplier knows or should reasonably know that it is not; ... [or] (7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction that the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have." Ind. Code § 24-5-0.5-3(b).

793. 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 Affected Vehicles emitted far more pollution than gasoline powered vehicles, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices, including representing that Affected Vehicles have sponsorship, approval, performance, characteristics, accessories, uses, or benefits that they do not have; that Affected Vehicles are of a particular standard, quality, grade, style, or model, when they are not and Mercedes knows or should reasonably know that it is not; and that Mercedes has a sponsorship, approval, or affiliation in such consumer transaction that Mercedes does not have, and which Mercedes knows or should reasonably know that it does not have.

794. 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, that the Affected Vehicles emitted far more pollution than gasoline powered vehicles, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above.

795. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

797. Mercedes knew or should have known that its conduct violated the Indiana DCSA.

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

799. 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 Plaintiff and the Subclass that contradicted these representations.

800. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

801. 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, would have paid less, 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.

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

803. 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.

804. 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.

805. Pursuant to Indiana Code § 24-5-0.5-4, 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) treble damages up to \$1,000 per Plaintiff and Subclass member for Mercedes' willfully deceptive acts.

806. Plaintiff and the Subclass also seek declaratory relief, attorneys' fees, and any other just and proper relief available under the Indiana DCSA.

807. Plaintiffs sent a letter to Mercedes complying with Indiana Code § 24-5-0.5-5(a).

COUNT II

FRAUDULENT CONCEALMENT (BASED ON INDIANA LAW)

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

809. This claim is brought on behalf of the Indiana Subclass.

810. 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 and higher than a reasonable consumer would expect from a clean diesel, 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.

811. 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, and would perform and operate properly when driven in normal usage.

812. Mercedes knew these representations were false when made.

813. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

814. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

815. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

816. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

817. 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.

818. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

819. Mercedes' omissions and false representations were material to consumers because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

820. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

821. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

822. 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.

823. 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, would have paid less, 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.

824. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

825. 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, 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.

826. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

827. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

828. Defendants' 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 Defendants. Defendants' 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 Kentucky Subclass

COUNT I

**VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT
(KY. REV. STAT. §§ 367.110, *et seq.*)**

829. Plaintiff Devin Downs (Plaintiff for purposes of all Kentucky Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

830. Plaintiff brings this Count on behalf of the Kentucky Subclass.

831. Mercedes, Plaintiff, and the Kentucky Subclass are “persons” within the meaning of the KY. REV. STAT. § 367.110(1).

832. Mercedes engaged in “trade” or “commerce” within the meaning of KY. REV. STAT. § 367.110(2).

833. 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 and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in deceptive business practices prohibited by the Kentucky CPA.

834. 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 higher levels of pollution than expected by a reasonable consumer from a clean diesel, as described above.

835. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

839. Mercedes knew or should have known that its conduct violated the Kentucky CPA.

840. 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.

841. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

842. 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, would have paid less, 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.

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

844. 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.

845. 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.

846. 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

FRAUD BY OMISSION

(BASED ON KENTUCKY LAW)

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

848. This claim is brought on behalf of the Kentucky Subclass.

849. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

850. 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, and would perform and operate properly when driven in normal usage.

851. Mercedes knew these representations were false when made.

852. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

853. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

854. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

855. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

856. 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.

857. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

858. Mercedes' omissions and false representations were material to consumers because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

859. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and

incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

860. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

861. 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.

862. 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, would have paid less, 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.

863. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

864. 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, 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.

865. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so

that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

866. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

867. Defendants' 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 Defendants. Defendants' 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 Maryland Subclass

COUNT I

**VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT
(MD. CODE COM. LAW §§ 13-101, *et seq.*)**

868. Plaintiffs Gustavo Fraga-Errecart, Hassan Zavareei, and Janice Sheehy (Plaintiffs for purposes of all Maryland Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

869. This claim is brought only on behalf of members of the Maryland Subclass.

870. Mercedes, Plaintiffs, and the Maryland Subclass are "persons" within the meaning of MD. CODE COM. LAW § 13-101(h).

871. 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. CODE COM. LAW § 13-303. 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 and that the Affected Vehicles emitted higher levels of pollution than expected by a reasonable consumer from a clean diesel, 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.

872. 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 higher levels of pollution than expected by a reasonable consumer from a clean diesel, as described above.

873. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

877. Mercedes knew or should have known that its conduct violated the Maryland CPA.

878. 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.

879. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

880. 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, would have paid less, 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.

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

882. 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.

883. 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.

884. 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

FRAUDULENT CONCEALMENT (BASED ON MARYLAND LAW)

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

886. This claim is brought on behalf of the Maryland Subclass.

887. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

888. 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, and would perform and operate properly when driven in normal usage.

889. Mercedes knew these representations were false when made.

890. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

891. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

892. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

893. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

894. 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.

895. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they

believe 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.

896. Mercedes' omissions and false representations were material to consumers because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

897. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

898. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

899. 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.

900. 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, would have paid less, 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.

901. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

902. 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, 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.

903. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

904. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

905. Defendants' 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 Defendants. Defendants'

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 Massachusetts Subclass

COUNT I

**VIOLATIONS OF THE MASSACHUSETTS CONSUMER
ACT
(MASS. GEN. LAWS CH. 93A)**

906. Plaintiffs Terry Garmey and Christopher Gates (Plaintiffs for purposes of all Massachusetts Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

907. Plaintiffs bring this Count on behalf of the Massachusetts Subclass.

908. Mercedes, Plaintiffs, and the Massachusetts Subclass are each a “person” within the meaning of Mass. Gen. Laws ch. 93A, § 1(a).

909. Mercedes engaged in “trade” or “commerce” within the meaning of Mass. Gen. Laws ch. 93A, § 1(b).

910. The Massachusetts Consumer Protection Act (“Massachusetts Act”) broadly prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce” within the meaning of Mass. Gen. Laws ch. 93A, § 2. 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, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in unfair and deceptive business practices prohibited by the Massachusetts Act. 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.

911. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

912. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

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

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

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

916. Mercedes knew or should have known that its conduct violated the Massachusetts Act.

917. 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.

918. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

919. 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, would have paid less, 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.

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

921. 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.

922. 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.

923. Pursuant to Mass Gen. Laws ch. 93A, § 9, Plaintiffs and the Massachusetts 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 \$25 for each Plaintiff and Subclass member. Because Mercedes' conduct was committed willfully and knowingly, Plaintiffs are entitled to recover, for each Plaintiff and each Massachusetts Subclass member, up to three times actual damages, but no less than two times actual damages.

924. Plaintiffs also seek punitive damages, attorneys' fees and costs, and any other just and proper relief available under the Massachusetts Act.

925. Plaintiffs have made a demand in satisfaction of MASS. GEN. LAWS CH. 93A, § 9(3),

COUNT II

FRAUDULENT CONCEALMENT (BASED ON MASSACHUSETTS LAW)

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

927. This claim is brought on behalf of the Massachusetts Subclass.

928. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect from a clean diesel, 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.

929. 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, and would perform and operate properly when driven in normal usage.

930. Mercedes knew these representations were false when made.

931. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, and emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

932. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

933. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

934. The truth about the defective emissions controls and Mercedes' manipulations of those controls, 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.

935. 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.

936. 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 providing a clean diesel. Consumers buy diesel cars from Mercedes because they believe 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.

937. Mercedes' omissions and false representations were material to consumers because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

938. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles 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 purchase or lease decision, as well as the value of the

Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

939. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

940. 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.

941. 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, would have paid less, 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.

942. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the

bargain, 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, 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.

943. 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, 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.

944. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

945. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

946. Defendants' 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 Defendants. Defendants' 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 Michigan Subclass

COUNT I

**VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
(MICH. COMP. LAWS § 445.903, *et seq.*)**

947. Plaintiff James Schafer (Plaintiff for purposes of all Michigan Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

948. This claim is brought on behalf of the Michigan Subclass.

949. Plaintiff and the Michigan Class Members were "person[s]" within the meaning of the MICH. COMP. LAWS § 445.902(1)(d).

950. 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 from a clean diesel, 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; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

951. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

952. Plaintiff and Subclass members reasonably relied upon Mercedes’ material omissions and 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.

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

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

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

956. Mercedes knew or should have known that its conduct violated the Michigan CPA.

957. 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.

958. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel,

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

959. 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, would have paid less, 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.

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

961. 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.

962. 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.

963. 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 Subclass member; reasonable attorneys' fees; and any other just and proper relief available under MICH. COMP. LAWS § 445.911.

964. 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

FRAUDULENT CONCEALMENT (BASED ON MICHIGAN LAW)

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

966. This claim is brought on behalf of the Michigan Subclass.

967. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

968. 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, and would perform and operate properly when driven in normal usage.

969. Mercedes knew these representations were false when made.

970. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

971. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

972. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

973. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

974. 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.

975. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

976. Mercedes' omissions and false representations were material to consumers because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

977. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and

incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

978. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

979. 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.

980. 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, would have paid less, 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.

981. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

982. 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, 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.

983. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so

that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

984. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

985. Defendants' 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 Defendants. Defendants' 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 Minnesota Subclass

COUNT I

**VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT
(MINN. STAT. § 325F.68, *et seq.*)**

986. Plaintiff Charles Wolford (Plaintiff for purposes of all Minnesota Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

987. This claim is brought on behalf of the Minnesota Subclass.

988. The Affected Vehicles constitute "merchandise" within the meaning of MINN. STAT. § 325F.68(2).

989. 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, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, 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.

990. 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 higher levels of pollutants than expected by a reasonable consumer, as described above.

991. Plaintiff and Subclass members reasonably relied upon Mercedes’ material omissions and 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.

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

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

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

995. Mercedes knew or should have known that its conduct violated the Minnesota CFA.

996. 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.

997. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the

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

998. 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, would have paid less, 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.

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

1000. 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.

1001. 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.

1002. 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.

1003. 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

FRAUDULENT CONCEALMENT (BASED ON MINNESOTA LAW)

1004. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1005. This claim is brought on behalf of the Minnesota Subclass.

1006. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

1007. 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, and would perform and operate properly when driven in normal usage.

1008. Mercedes knew these representations were false when made.

1009. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1010. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1011. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1012. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1013. 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.

1014. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1015. Mercedes' omissions and false representations were material to consumers because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

1016. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and

incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1017. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1018. 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.

1019. 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, would have paid less, 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.

1020. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1021. 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, 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.

1022. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so

that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1023. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1024. Defendants' 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 Defendants. Defendants' 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 Mississippi Subclass

COUNT I

**VIOLATIONS OF THE MISSISSIPPI CONSUMER PROTECTION ACT
(MISS. CODE ANN. §§ 75-24-1, *et seq.*)**

1025. Plaintiff David Ashcraft (Plaintiff, for purposes of all Mississippi Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

1026. Plaintiff brings this Count on behalf of the Mississippi Subclass.

1027. Mississippi's Consumer Protection Act (the "Mississippi CPA") prohibits "unfair or deceptive trade practices in or affecting commerce," which include but are not limited to "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have," and "[r]epresenting 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 "[a]dvertising goods or services with intent not to sell them as advertised." MISS. CODE. ANN. § 75-24-5.

1028. 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 Affected Vehicles emitted far more pollution than gasoline powered vehicles, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices, including "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have," and "[r]epresenting 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 "[a]dvertising goods or services with intent not to sell them as advertised." 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.

1029. 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, that the Affected Vehicles emitted far more pollution than gasoline powered vehicles, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above.

1030. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1031. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1032. Mercedes knew or should have known that its conduct violated the Mississippi CPA.

1033. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1034. 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.

1035. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the

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

1036. 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, would have paid less, 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.

1037. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1038. 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.

1039. 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.

1040. Pursuant to MISS. CODE ANN. § 75-24-15(1), Plaintiff and the Subclass seek actual damages in an amount to be determined at trial.

1041. Plaintiff and the Subclass also seek declaratory relief and any other just and proper relief available under the Mississippi CPA.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON MISSISSIPPI LAW)

1042. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1043. This claim is brought on behalf of the Mississippi Subclass.

1044. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

1045. 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, and would perform and operate properly when driven in normal usage.

1046. Mercedes knew these representations were false when made.

1047. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1048. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1049. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1050. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1051. 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.

1052. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1053. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

1054. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the

Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1055. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1056. 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.

1057. 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, would have paid less, 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.

1058. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1059. 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, 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.

1060. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1061. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1062. Defendants' 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 Defendants. Defendants' 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 Missouri Subclass

COUNT I

**VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT
(MO. REV. STAT. §§ 407.010, *et seq.*)**

1063. Plaintiff Craig Thorson (Plaintiff for purposes of all Missouri Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

1064. Plaintiff brings this Count on behalf of the Missouri Subclass.

1065. Mercedes, Plaintiff, and the Missouri Subclass are each "persons" within the meaning of MO. REV. STAT. § 407.010(5).

1066. Mercedes engaged in "trade" or "commerce" in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

1067. 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 from a clean diesel, 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.

1068. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1069. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1070. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1071. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1072. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1073. Mercedes knew or should have known that its conduct violated the Missouri MPA.

1074. 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.

1075. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1076. 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, would have paid less, 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.

1077. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1078. 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.

1079. 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.

1080. 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

FRAUDULENT CONCEALMENT (BASED ON MISSOURI LAW)

1081. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1082. This claim is brought on behalf of the Missouri Subclass.

1083. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect from a clean diesel, 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.

1084. 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, and would perform and operate properly when driven in normal usage.

1085. Mercedes knew these representations were false when made.

1086. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1087. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1088. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1089. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1090. 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.

1091. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1092. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and

establishing 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.

1093. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1094. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1095. 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.

1096. 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, would have paid less, 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.

1097. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1098. 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, 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.

1099. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1100. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1101. Defendants' 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 Defendants. Defendants' 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 Montana Subclass

COUNT I

**VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER
PROTECTION ACT OF 1973
(MONT. CODE ANN. § 30-14-101, *et seq.*)**

1102. Plaintiff Henry Silverio (Plaintiff for purposes of all Montana Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1103. This claim is brought only on behalf of the Montana Subclass.

1104. Mercedes, Plaintiff, and the Montana Subclass are each “persons” within the meaning of MONT. CODE ANN. § 30-14-102(6).

1105. Montana Subclass Members are “consumer[s]” under MONT. CODE ANN. § 30-14-102(1).

1106. 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.

1107. 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, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1108. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1109. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1110. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1111. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1112. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1113. Mercedes knew or should have known that its conduct violated the Montana CPA.

1114. 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.

1115. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1116. 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, would have paid less, 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.

1117. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1118. 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.

1119. 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.

1120. 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

FRAUD BY CONCEALMENT (BASED ON MONTANA LAW)

1121. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1122. This claim is brought on behalf of the Montana Subclass.

1123. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered

vehicles and higher than a reasonable consumer would expect from a clean diesel, or Mercedes acted with reckless disregard for the truth, and denied Plaintiff and the other Class members information that is highly relevant to their purchasing decision.

1124. 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, and would perform and operate properly when driven in normal usage.

1125. Mercedes knew these representations were false when made.

1126. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1127. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1128. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1129. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1130. 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.

1131. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1132. Mercedes' omissions and false representations were material to consumers because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiff's decision to purchase the Affected Vehicles and establishing 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.

1133. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1134. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1135. 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.

1136. 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, would have paid less, 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.

1137. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1138. 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, 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.

1139. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1140. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1141. Defendants' 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 Defendants. Defendants' 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 Nevada Subclass

COUNT I

**VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT
(NEV. REV. STAT. §§ 598.0903, *et seq.*)**

1142. 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.

1143. Plaintiffs bring this Count on behalf of the Nevada Subclass.

1144. 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.

1145. 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 higher levels of pollution than expected by a reasonable consumer from a clean diesel, as described above.

1146. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1147. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1148. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1149. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1150. Mercedes knew or should have known that its conduct violated the Nevada DTPA.

1151. 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.

1152. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1153. 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, would have paid less, 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.

1154. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1155. 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.

1156. 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.

1157. 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 DPTA. NEV. REV. STAT. § 41.600.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON NEVADA LAW)

1158. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1159. This claim is brought on behalf of the Nevada Subclass.

1160. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1161. 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, and would perform and operate properly when driven in normal usage.

1162. Mercedes knew these representations were false when made.

1163. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel, and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

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, that these Affected Vehicles were defective and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1165. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1166. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1167. 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.

1168. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1169. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

1170. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1171. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1172. 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.

1173. 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, would have paid less, 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.

1174. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1175. 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, 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.

1176. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1177. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1178. Defendants' 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 Defendants. Defendants' 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 New York Subclass

COUNT I

**VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(N.Y. GEN. BUS. LAW § 349)**

1179. 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.

1180. This claim is brought on behalf of the New York Subclass.

1181. 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, and that the Affected Vehicles emit far more pollution than a reasonable consumer would expect from a clean diesel, as described above. The challenged act or practice was "consumer-oriented;" that the act or practice was misleading in a material way; and Plaintiffs suffered injury as a result of the deceptive act or practice. Accordingly, Mercedes has violated General Business Law § 349.

1182. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1183. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1184. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1185. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1186. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1187. Mercedes knew or should have known that its conduct violated General Business Law § 349.

1188. 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.

1189. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1190. 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, would have paid less, 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.

1191. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1192. 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.

1193. 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.

1194. 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)

1195. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1196. This claim is brought on behalf of the New York Subclass.

1197. 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.

1198. 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.

1199. Mercedes has violated N.Y. GEN. BUS. LAW § 350 because of 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.

1200. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1201. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1202. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1203. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1204. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1205. Mercedes knew or should have known that its conduct violated General Business Law § 350.

1206. 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.

1207. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1208. 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, would have paid less, 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.

1209. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1210. 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.

1211. 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.

1212. 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

FRAUDULENT CONCEALMENT (BASED ON NEW YORK LAW)

1213. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1214. This claim is brought on behalf of the New York Subclass.

1215. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1216. 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, and would perform and operate properly when driven in normal usage.

1217. Mercedes knew these representations were false when made.

1218. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1219. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Class members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1220. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1221. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1222. 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.

1223. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1224. Mercedes' omissions and false representations were material to consumers because they concerned the quality of the affected vehicles, and also because the representations played a significant role in Plaintiffs' decision to purchase the Affected Vehicles and establishing 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.

1225. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1226. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1227. 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.

1228. 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, would have paid less, 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.

1229. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1230. 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, 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.

1231. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1232. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1233. Defendants' 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 Defendants. Defendants' 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 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.*)**

1234. 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.

1235. Plaintiffs bring this Count on behalf of the North Carolina Subclass.

1236. Mercedes engaged in "commerce" within the meaning of N.C. GEN. STAT. § 75-1.1(b).

1237. 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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in unfair and deceptive trade practices because it (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.

1238. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1239. Plaintiffs and Subclass members reasonably relied upon Mercedes’ material omissions and 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.

1240. Mercedes’ actions as set forth above occurred in the conduct of trade or commerce.

1241. Mercedes’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1242. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1243. Mercedes knew or should have known that its conduct violated the North Carolina UDTPA.

1244. 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.

1245. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1246. 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, would have paid less, 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.

1247. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1248. 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.

1249. 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.

1250. Plaintiffs seek an order for treble their actual damages, costs of Court, attorneys' fees, and any other just and proper relief available under the North Carolina Act, N.C. GEN. STAT. § 75-16.

1251. Plaintiffs also seek punitive damages against Mercedes because Mercedes' conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON NORTH CAROLINA LAW)

1252. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1253. This claim is brought on behalf of the North Carolina Subclass.

1254. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1255. 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, and would perform and operate properly when driven in normal usage.

1256. Mercedes knew these representations were false when made.

1257. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1258. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1259. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1260. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1261. 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.

1262. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1263. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1264. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1265. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1266. 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.

1267. 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, would have paid less, 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.

1268. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1269. 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, 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.

1270. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1271. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1272. Defendants' 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 Defendants. Defendants' 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 Ohio Subclass

COUNT I

**VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT
(OHIO REV. CODE ANN. §§ 1345.01, *et seq.*)**

1273. Plaintiff Andrew Deutsch (Plaintiff for purposes of all Ohio Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1274. This claim is brought on behalf of the Ohio Subclass.

1275. Plaintiff and the other Ohio Subclass members are "consumers" as defined by the Ohio Consumer Sales Practices Act, OHIO REV. CODE ANN. § 1345.01 ("Ohio CSPA"). Mercedes is a "supplier" as defined by the Ohio CSPA. Plaintiff's and the other Ohio Subclass members' purchases or leases of Affected Vehicles were "consumer transactions" as defined by the Ohio CSPA.

1276. The Ohio CSPA, OHIO REV. CODE ANN. § 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 ANN. § 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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1277. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1278. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1279. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1280. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1281. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1282. Mercedes knew or should have known that its conduct violated the Ohio CSPA.

1283. 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.

1284. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and

representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1285. 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, would have paid less, 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.

1286. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1287. 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.

1288. 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.

1289. 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.

1290. Plaintiff also seeks court costs and attorneys' fees as a result of Mercedes' violations of the Ohio CSPA as provided in OHIO REV. CODE ANN. § 1345.09.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON OHIO LAW)

1291. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1292. This claim is brought on behalf of the Ohio Subclass.

1293. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1294. 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, and would perform and operate properly when driven in normal usage.

1295. Mercedes knew these representations were false when made.

1296. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1297. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1298. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1299. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1300. 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.

1301. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1302. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1303. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1304. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1305. 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.

1306. 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, would have paid less, 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.

1307. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1308. 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, 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.

1309. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1310. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1311. Defendants' 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 Defendants. Defendants' 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 Pennsylvania Subclass

COUNT I

**VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW
(73 P.S. §§ 201-1, *et seq.*)**

1312. Plaintiff Wendell A. Dingle (Plaintiff for purposes of all Pennsylvania Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

1313. Plaintiff brings this Count on behalf of the Pennsylvania Subclass.

1314. Plaintiff purchased or leased their Affected Vehicle primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

1315. 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).

1316. 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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1317. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1318. Plaintiff and Subclass members reasonably relied upon Mercedes’ material omissions and 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.

1319. Mercedes’ actions as set forth above occurred in the conduct of trade or commerce.

1320. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1321. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1322. Mercedes knew or should have known that its conduct violated the Pennsylvania CPL.

1323. 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.

1324. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and

representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1325. 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, would have paid less, 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.

1326. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1327. 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.

1328. 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.

1329. 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 Subclass 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

FRAUDULENT CONCEALMENT (BASED ON PENNSYLVANIA LAW)

1330. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1331. This claim is brought on behalf of the Pennsylvania Subclass.

1332. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1333. 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, and would perform and operate properly when driven in normal usage.

1334. Mercedes knew these representations were false when made.

1335. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1336. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1337. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1338. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1339. 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.

1340. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1341. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1342. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1343. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1344. 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.

1345. 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, would have paid less, 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.

1346. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1347. 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, 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.

1348. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1349. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1350. Defendants' 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 Defendants. Defendants' 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 South Carolina Subclass

COUNT I

**VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT
(S.C. CODE ANN. §§ 39-5-10, *et seq.*)**

1351. Plaintiff Caroline Ledlie (Plaintiff for purposes of all South Carolina Subclass Counts) incorporates by reference all preceding allegations as though fully set forth herein.

1352. Plaintiff brings this Count on behalf of the South Carolina Subclass.

1353. Mercedes, Plaintiff, and the South Carolina Subclass are "persons" within the meaning of S.C. CODE ANN. § 39-5-10(a).

1354. Mercedes engaged in "trade" or "commerce" within the meaning of S.C. CODE ANN. § 39-5-10(b).

1355. The South Carolina Unfair Trade Practices Act ("South Carolina UTPA") broadly prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. CODE ANN. § 39-5-20(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, and that the Affected Vehicles emitted far more pollution than a

reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in unfair and deceptive business practices prohibited by the South Carolina UTPA. 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.

1356. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1357. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1358. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1359. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1360. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1361. Mercedes knew or should have known that its conduct violated the South Carolina UTPA.

1362. 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.

1363. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1364. 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, would have paid less, 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.

1365. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1366. 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.

1367. 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.

1368. Pursuant to S.C. CODE ANN. § 39-5-140(a), Mercedes is liable to Plaintiff and the Subclass for damages in amounts to be proven at trial, treble damages for willful and knowing violations, punitive damages, and attorneys' fees and costs, as well as any other remedies the Court may deem appropriate under the South Carolina UTPA.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON SOUTH CAROLINA LAW)

1369. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1370. This claim is brought on behalf of the South Carolina Subclass.

1371. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1372. 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, and would perform and operate properly when driven in normal usage.

1373. Mercedes knew these representations were false when made.

1374. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1375. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1376. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1377. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1378. 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.

1379. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1380. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's and Subclass members' decision to

purchase the Affected Vehicles and establishing 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.

1381. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1382. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1383. 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.

1384. 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, would have paid less, 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.

1385. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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,

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.

1386. 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, 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.

1387. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1388. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

BB. 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.*)**

1389. Plaintiff Arthur Daschke (Plaintiff for purposes of all Tennessee Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

1390. Plaintiff brings this Count on behalf of the Tennessee Subclass.

1391. Plaintiff and the Tennessee Subclass are “natural persons” and “consumers” within the meaning of TENN. CODE ANN. § 47-18-103(2).

1392. Mercedes is a “person” within the meaning of TENN. CODE ANN. § 47-18-103(2).

1393. Mercedes’ conduct complained of herein affected “trade,” “commerce” or “consumer transactions” within the meaning of TENN. CODE ANN. § 47-18-103(19).

1394. 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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1395. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1396. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1397. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1398. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1399. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1400. Mercedes knew or should have known that its conduct violated the Tennessee CPA.

1401. 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.

1402. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1403. 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, would have paid less, 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.

1404. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1405. 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.

1406. 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.

1407. Pursuant to TENN. CODE ANN. § 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

FRAUD BY CONCEALMENT (BASED ON TENNESSEE LAW)

1408. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1409. This claim is brought on behalf of the Tennessee Subclass.

1410. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1411. 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, and would perform and operate properly when driven in normal usage.

1412. Mercedes knew these representations were false when made.

1413. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1414. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1415. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1416. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1417. 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.

1418. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1419. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1420. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1421. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1422. 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.

1423. 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, would have paid less, 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.

1424. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1425. 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, 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.

1426. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch

technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1427. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1428. Defendants' 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 Defendants. Defendants' 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.

CC. 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.*)

1429. 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.

1430. Plaintiffs bring this Count on behalf of the Texas Subclass.

1431. 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.

1432. 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.

1433. 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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1434. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1435. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1436. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1437. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1438. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1439. Mercedes knew or should have known that its conduct violated the Texas DTPA.

1440. 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.

1441. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1442. 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, would have paid less, 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.

1443. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1444. 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.

1445. 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.

1446. Plaintiffs and the Subclass seek damages and treble damages for Mercedes' knowing violations.

1447. Plaintiffs gave written notice prior to filing suit as required by TEX. BUS. & COM. CODE § 17.505(a).

COUNT II

FRAUD BY CONCEALMENT (BASED ON TEXAS LAW)

1448. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1449. This claim is brought on behalf of the Texas Subclass.

1450. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1451. 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, and would perform and operate properly when driven in normal usage.

1452. Mercedes knew these representations were false when made.

1453. 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 from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1454. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1455. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1456. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1457. 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.

1458. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1459. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1460. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1461. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1462. 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.

1463. 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, would have paid less, 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.

1464. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1465. 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, 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.

1466. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1467. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1468. Defendants' 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 Defendants. Defendants' 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 Utah Subclass

COUNT I

**VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT
(UTAH CODE ANN. §§ 13-11-1, *et seq.*)**

1469. Plaintiffs Seid Dilgisic and Tiffany Knight (Plaintiffs for purposes of all Utah Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

1470. Plaintiffs bring this Count on behalf of the Utah Subclass.

1471. Mercedes is a “supplier” under the Utah Consumer Sales Practices Act (“Utah CSPA”), UTAH CODE ANN. § 13-11-3.

1472. Plaintiffs and the Subclass members are “persons” under UTAH CODE ANN. § 13-11-3.

1473. Sales of the Affected Vehicles to Plaintiffs and the Subclass were “consumer transactions” within the meaning of UTAH CODE ANN. § 13-11-3.

1474. 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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1475. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1476. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1477. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1478. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1479. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1480. Mercedes knew or should have known that its conduct violated the Utah CSPA.

1481. 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.

1482. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1483. 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, would have paid less, 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.

1484. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1485. 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.

1486. 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.

1487. 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 Subclass member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON UTAH LAW)

1488. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1489. This claim is brought on behalf of the Utah Subclass.

1490. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1491. 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, and would perform and operate properly when driven in normal usage.

1492. Mercedes knew these representations were false when made.

1493. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1494. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1495. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1496. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1497. 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.

1498. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they

believe 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.

1499. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1500. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the

emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1501. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1502. 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.

1503. 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, would have paid less, 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.

1504. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1505. 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, 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.

1506. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1507. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1508. Defendants' 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 Defendants. Defendants' 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.

EE. 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.*)**

1509. Plaintiffs Ulyana Lynevych and Darrell Feller (Plaintiffs for purposes of all Virginia Subclass Counts) incorporate by reference all paragraphs as though fully set forth herein.

1510. This claim is brought on behalf of the Virginia Subclass.

1511. 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.

1512. 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 emitted far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1513. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1514. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1515. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1516. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1517. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1518. Mercedes knew or should have known that its conduct violated the Virginia CPA.

1519. 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.

1520. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1521. 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, would have paid less, 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.

1522. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1523. 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.

1524. 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.

1525. 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.

1526. Plaintiffs also seek punitive damages, and attorneys' fees, and any other just and proper relief available under VA. CODE ANN. § 59.1-204, *et seq.*

COUNT II

FRAUD BY CONCEALMENT (UNDER VIRGINIA LAW)

1527. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1528. This claim is brought on behalf of the Virginia Subclass.

1529. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1530. 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, and would perform and operate properly when driven in normal usage.

1531. Mercedes knew these representations were false when made.

1532. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1533. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1534. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1535. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1536. 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.

1537. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1538. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1539. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1540. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1541. 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.

1542. 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, would have paid less, 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.

1543. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1544. 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, 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.

1545. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1546. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1547. Defendants' 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 Defendants. Defendants' 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.

FF. 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.*)**

1548. 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.

1549. Plaintiffs bring this Count on behalf of the Washington Subclass.

1550. Mercedes, Plaintiffs, and the Washington Subclass are a "person" under WASH. REV. CODE ANN. § 19.86.010(1) ("Washington CPA").

1551. Mercedes engaged in "trade" or "commerce" under WASH. REV. CODE ANN. § 19.86.010(2).

1552. 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 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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1553. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1554. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1555. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1556. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1557. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1558. Mercedes knew or should have known that its conduct violated the Washington CPA.

1559. 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.

1560. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1561. 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, would have paid less, 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.

1562. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1563. 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.

1564. 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.

1565. 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

FRAUDULENT CONCEALMENT (BASED ON WASHINGTON LAW)

1566. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1567. This claim is brought on behalf of the Washington Subclass.

1568. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1569. 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, and would perform and operate properly when driven in normal usage.

1570. Mercedes knew these representations were false when made.

1571. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1572. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1573. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1574. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1575. 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.

1576. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they

believe 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.

1577. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1578. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the

emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1579. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1580. 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.

1581. 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, would have paid less, 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.

1582. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1583. 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, 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.

1584. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1585. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

GG. 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.*)**

1586. Plaintiff James Edwards (Plaintiff for purposes of all West Virginia Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

1587. Plaintiff brings this Count on behalf of the West Virginia Subclass.

1588. Mercedes is a “person” under W. VA. CODE § 46A-1-102(31).

1589. Plaintiff and the West Virginia Subclass are “consumers,” as defined by W. VA. CODE §§ 46A-1-102(12) and 46A-6-102(2), who purchased or leased one or more Affected Vehicles.

1590. Mercedes engaged in trade or commerce as defined by W. VA. CODE § 46A-6-102(6).

1591. 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; [and]

(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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, 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.

1592. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1593. Plaintiff and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1594. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1595. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1596. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Subclass.

1597. Mercedes knew or should have known that its conduct violated the West Virginia CCPA.

1598. 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.

1599. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1600. 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, would have paid less, 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.

1601. Mercedes' conduct proximately caused injuries to Plaintiff and the other Subclass members.

1602. 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.

1603. 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.

1604. 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.

1605. 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.

1606. Plaintiff further seeks restitution, punitive damages, costs of Court, attorneys' fees under W. VA. CODE § 46A-5-101, *et seq.*, and any other just and proper relief available under the West Virginia CCPA.

1607. 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, Plaintiff seeks all damages and relief to which Plaintiff and the West Virginia Subclass are entitled.

COUNT II

FRAUDULENT CONCEALMENT

(BASED ON WEST VIRGINIA LAW)

1608. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1609. This claim is brought on behalf of the West Virginia Subclass.

1610. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1611. 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, and would perform and operate properly when driven in normal usage.

1612. Mercedes knew these representations were false when made.

1613. The Affected Vehicles purchased or leased by Plaintiff and the other Class members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1614. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiff and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1615. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1616. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1617. 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.

1618. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1619. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiff's and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1620. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1621. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiff and Subclass members.

1622. 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.

1623. 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, would have paid less, 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.

1624. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1625. 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, 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.

1626. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1627. Accordingly, Defendants are liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1628. Defendants' 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 Defendants. Defendants' 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.

HH. Claims Brought on Behalf of the Wisconsin Subclass

COUNT I

**VIOLATIONS OF THE WISCONSIN
DECEPTIVE TRADE PRACTICES ACT
(WIS. STAT. § 110.18)**

1629. Plaintiffs Lars Dannberg and Zbigniew Kurzawa (Plaintiffs for purposes of all Wisconsin Subclass Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1630. Plaintiffs bring this claim on behalf of the Wisconsin Subclass.

1631. Mercedes is a "person, firm, corporation or association" within the meaning of WIS. STAT. § 100.18(1).

1632. Plaintiffs and Wisconsin Subclass members are members of "the public" within the meaning of WIS. STAT. § 100.18(1). Plaintiffs and Wisconsin Subclass members purchased or leased one or more Affected Vehicles.

1633. 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, and that the Affected Vehicles emitted far more pollution than a reasonable consumer would expect from a clean diesel, as described above. Accordingly, Mercedes engaged in deceptive business practices prohibited by the Wisconsin DTPA.

1634. 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 higher levels of pollutants than expected by a reasonable consumer from a clean diesel, as described above.

1635. Plaintiffs and Subclass members reasonably relied upon Mercedes' material omissions and 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.

1636. Mercedes' actions as set forth above occurred in the conduct of trade or commerce.

1637. Mercedes' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1638. Mercedes intentionally and knowingly failed to disclose and misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Subclass.

1639. Mercedes knew or should have known that its conduct violated the Wisconsin DTPA.

1640. 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.

1641. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles and that the emissions far exceeded those expected by a reasonable consumer from a clean diesel, because, 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. Further, Plaintiffs and the other Subclass members relied on Mercedes' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1642. 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, would have paid less, 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.

1643. Mercedes' conduct proximately caused injuries to Plaintiffs and the other Subclass members.

1644. 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.

1645. 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.

1646. Plaintiffs 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, Plaintiffs and the Wisconsin Subclass are entitled to treble damages.

1647. Plaintiffs and the Wisconsin Subclass also seek court costs and attorneys' fees under WIS. STAT. § 110.18(11)(b)(2).

COUNT II

FRAUDULENT CONCEALMENT (BASED ON WISCONSIN LAW)

1648. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1649. This claim is brought on behalf of the Wisconsin Subclass.

1650. Mercedes intentionally concealed 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, emitted pollutants at a higher level than gasoline powered vehicles and higher than a reasonable consumer would expect from a clean diesel, 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.

1651. 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, and would perform and operate properly when driven in normal usage.

1652. Mercedes knew these representations were false when made.

1653. The Affected Vehicles purchased or leased by Plaintiffs and the other Subclass members were, in fact, defective, emitted pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect from a clean diesel and are unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1654. 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 and emitted pollutants at a much higher rate than gasoline powered vehicles, and that the emissions far exceeded those expected by a reasonable consumer and were unreliable, because Plaintiffs and the other Subclass members relied on Mercedes' material omissions and

representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1655. As alleged in this Complaint, at all relevant times, Mercedes has held out the Affected Vehicles to be reduced emissions 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 and emitted higher levels of pollutants than expected by a reasonable consumer from a clean diesel, making other disclosures about the emission system deceptive.

1656. The truth about the defective emissions controls and Mercedes' manipulations of those controls 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.

1657. 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.

1658. 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 providing a clean diesel vehicle. Consumers buy diesel cars from Mercedes because they believe 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.

1659. Mercedes' omissions and false representations were material to consumers, because they concerned the quality of the Affected Vehicles, and also because the representations played a significant role in Plaintiffs' and Subclass members' decision to purchase the Affected Vehicles and establishing 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.

1660. Mercedes had a duty to disclose the emissions defect and defective design of emissions controls in 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, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of its vehicles, 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 purchase or lease decision, as well as the value of the Affected Vehicles purchased or leased by Plaintiffs and Subclass members. Whether a manufacturer's products pollute, and whether that manufacturer tells the truth about the emissions characteristics of its vehicles, are material concerns to a consumer. 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 vehicles.

1661. 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, which perception would hurt the brand's image and cost Mercedes money, and it did so at the expense of Plaintiffs and Subclass members.

1662. 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.

1663. 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, would have paid less, 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.

1664. Because of the concealment and/or suppression of the facts, Plaintiffs and Subclass members have sustained damage because they were deprived of the benefit of the bargain, 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, 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.

1665. 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, 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.

1666. Bosch played a critical role in facilitating, and itself contributed to, Mercedes' fraudulent concealment. Bosch knew that Mercedes would use and had used the Bosch technology as a means to turn off or limit emission controls during normal driving conditions so that the Affected Vehicles would not be clean diesels, and in fact Bosch helped Mercedes do so. Without Bosch's complicity and silence, Mercedes could not have perpetrated the fraudulent scheme alleged herein, and Bosch's actions themselves constitute fraudulent concealment.

1667. Accordingly, Defendants are liable to Plaintiffs and Subclass members for damages in an amount to be proven at trial.

1668. Defendants' 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 Defendants. Defendants'

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: December 16, 2016

Respectfully submitted,

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