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9 Attorneys for Plaintiff, individually and on behalf of all others similarly situated

10 **UNITED STATES DISTRICT COURT**

11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 CARL BARBATA, JR., individually  
13 and on behalf of all others similarly  
14 situated,

15 Plaintiff,

16 v.

17 AUDI OF AMERICA, LLC, and  
18 AUDI AG,

19 Defendants.

Case No. '16CV2875 L MDD

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

20  
21 Plaintiff Carl Barbata, Jr. (“Plaintiff”), individually and on behalf of all  
22 others similarly situated, brings this action against Defendants Audi AG and Audi  
23 of America, LLC (unless otherwise indicated, both Defendants are collectively  
24 referred to as “Audi”). All allegations made in this Complaint are based upon  
25 information and belief except those allegations that pertain to Plaintiff, which are  
26 based on personal knowledge. Each allegation in this Complaint either has  
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1 evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the Federal Rules  
2 of Civil Procedure, is likely to have evidentiary support after a reasonable  
3 opportunity for further investigation or discovery.  
4

5 **I. NATURE OF THE ACTION**

6 1. Plaintiff brings this action in connection with Audi’s practice of  
7 equipping certain gasoline vehicles with an illegal “defeat device” designed to evade  
8 governmental emissions regulations by tricking the public and regulators into  
9 thinking the vehicles emit far less noxious carbon dioxide gas (“CO<sub>2</sub>”) than they  
10 actually do.  
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13 2. In September 2015, and again in November 2015, Volkswagen and  
14 Audi admitted using defeat device software to activate emissions controls when  
15 diesel cars were being smog tested and deactivate those controls during normal,  
16 on-road driving. Volkswagen, Audi AG’s parent company, took the position that the  
17 diesel defeat device was an isolated incident, which it dubiously blamed on “rogue  
18 engineers.”  
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21 3. It was not an isolated incident, and the unlawful activity was not  
22 perpetrated by a few “rogue engineers” but by hundreds of personnel throughout the  
23 companies.  
24

25 4. Moreover, Audi’s unlawful activity was not limited to its diesel  
26 vehicles. It has recently been reported that Audi has been hiding its use of a  
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1 completely different defeat device on additional *gasoline* vehicles equipped with  
2 automatic transmissions.

3  
4 5. The vehicles containing the illegal defeat device include at least those  
5 vehicles Audi equipped with (1) a ZF 8HP55 “AL551” transmission, including but  
6 not limited to, the A6, A8, Q5, and Q 7 or (2) a DL 501-7Q “DL 501” transmission,  
7 including, but not limited to, the Audi S4, S5, S6, and S7 models (collectively the  
8 “Affected Vehicles”). In those vehicles, Audi installed software which detects  
9 when the vehicle undergoes emissions and mileage testing and then programs the  
10 car to shift into each higher gear sooner, thus reducing engine RPM, fuel  
11 consumption, and CO2 emissions. But otherwise, during normal driving operation,  
12 the cars’ shift points are higher, resulting in more power and acceleration, but  
13 increased fuel consumption, lower MPG, and higher CO2 emissions.

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16  
17 6. Audi sold the Affected Vehicles to Plaintiff and Class members without  
18 informing them of the existence of the defeat devices, and by falsely representing to  
19 them that the Affected Vehicles were compliant with all relevant emissions standards  
20 when in normal use. Audi also falsely represented the fuel efficiency of the Affected  
21 Vehicles.

22  
23  
24 7. Because the existence of the defeat devices was concealed, Plaintiff and  
25 the Class members were unaware that the vehicles they purchased were equipped  
26 with illegal defeat devices.  
27

1           8.       Plaintiff and Class members suffered damages as a result of Audi's  
2 misrepresentations and omissions regarding the defeat device. Plaintiff would not  
3 have purchased the Affected Vehicle at all and/or—if the Affected Vehicle's true  
4 nature had been disclosed and mitigated, and the Affected Vehicle rendered legal to  
5 sell—would have paid significantly less for it. At the very least, Plaintiff and Class  
6 members overpaid for their vehicles, which are incapable of providing the balance of  
7 performance, fuel efficiency, and cleanliness that Audi advertised. Plaintiff and  
8 Class members have also suffered diminution of vehicle value now that the existence  
9 of the defeat device has been revealed.

13           9.       Plaintiff and similarly situated owners and lessees of the Affected  
14 Vehicles are entitled to compensation for their losses, including losses related to  
15 increased fuel expenditures. Plaintiff therefore brings this proposed class action for  
16 damages on behalf of himself and on behalf of the other members of the nationwide  
17 class and California class defined below.

## 20   **II.     JURISDICTION & VENUE**

21           10.       This Court has jurisdiction pursuant to the Class Action Fairness Act of  
22 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more  
23 members; the amount in controversy exceeds \$5,000,000, exclusive of costs and  
24 interest; and minimal diversity exists. Minimal diversity exists for two independent  
25 reasons: (i) plaintiff and the defendants are diverse, and (ii) the proposed class  
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1 contains citizens of states outside of defendants' home jurisdictions, as per 28 U.S.C.  
2 § 1332(d)(2).

3  
4 11. The Court has personal jurisdiction over Audi AG and Audi America  
5 because the alleged wrongdoing occurred in California and because Audi AG and  
6 Audi America have sufficient minimum contacts with California and have otherwise  
7 intentionally availed themselves of the markets in California.  
8

9 12. Venue is proper in the United States District Court for the Southern  
10 District of California pursuant to 28 U.S.C. § 1391 (b)-(c) because Audi AG and  
11 Audi America are corporate entities that are deemed to reside in any judicial district  
12 in which they are subject to personal jurisdiction at the time the action is  
13 commenced, and because their contacts with this District are sufficient to subject it  
14 to personal jurisdiction.  
15  
16

17 **III. PARTIES**

18 13. Plaintiff CARL BARBATA JR. (for the purpose of this paragraph,  
19 "Plaintiff") is a citizen of California domiciled in San Bernardino County,  
20 California. In or around January 2016, Plaintiff purchased a new 2016 Audi A6  
21 from Walter's Audi. Plaintiff purchased, and still owns, the vehicle. Unknown to  
22 Plaintiff, at the time the vehicle was purchased, it was designed and equipped to turn  
23 off or limit emissions reduction during normal driving conditions, resulting in CO2  
24 emissions that were higher than Audi represented and fuel economy that was lower  
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1 than Audi represented. Audi's unfair, unlawful, and deceptive conduct in designing,  
2 manufacturing, marketing, selling, and leasing Audi 3.0-liter gasoline engine  
3 vehicles with these manipulations has caused Plaintiff out-of-pocket loss, future  
4 attempted repairs, and diminished value of his vehicle. Had Audi disclosed this  
5 design, and the fact that his Audi actually emitted pollutants at a much higher level  
6 than stated and that his vehicle had substantially lower fuel economy than stated,  
7 Plaintiff would not have purchased the vehicle, or would have paid less for it.

10 14. Audi of America, LLC ("Audi America") is a Delaware limited liability  
11 company with its principal place of business located at 2200 Ferdinand Porsche  
12 Drive, Herndon, Virginia 20171. Audi America is a wholly-owned U.S.  
13 subsidiary of Audi AG, and it engaged in business, including the advertising,  
14 marketing and sale of Audi automobiles, in all 50 states, including this district.

17 15. Audi AG is a German corporation with its principal place of business in  
18 Ingolstadt, Germany. Audi AG is the parent company of Audi of America, LLC and  
19 a subsidiary of the Audi Group, which is a wholly-owned subsidiary of VW AG.  
20 Audi AG designs, develops, manufacturers, and sells luxury automobiles.  
21 According to Audi AG, the Audi Group sold 1.8 million cars worldwide in 2015,  
22 including more than 200,000 vehicles in the United States, with sales revenues in  
23 2015 totaling €8.5 billion (approximately \$64.34 billion).

#### 26 IV. FACTUAL ALLEGATIONS

1           16. It has been widely publicized that Audi and its parent Volkswagen, for  
2 years, engaged in an extensive scheme to misrepresent the emissions of their so-  
3 called “clean diesel” vehicles by equipping them with a defeat device.  
4

5           17. The defeat device at issue in that litigation used a multi-faceted  
6 algorithm to detect when vehicles were being operated on dynamometers, such as is  
7 used in smog testing facilities and by the Environmental Protection Agency, the  
8 California Air Resources Board, and state regulators when determining whether  
9 vehicles comply with emissions standards. When the diesel defeat device detected  
10 that the car was undergoing emissions testing, it would engage full emissions  
11 controls, which allowed the diesel vehicles to pass stringent standards for Oxides of  
12 Nitrogen (NOx) emissions. But during on-road driving, these same cars emitted 10-  
13 40 times the legal limits for NOx because the emission controls were turned off.  
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17           18. It has been recently discovered and widely reported that Audi  
18 equipped many of its *gasoline* vehicles with an entirely different defeat device to  
19 falsify and misrepresent carbon dioxide emissions and, upon information and belief,  
20 fuel efficiency. According to reports, this defeat device is particularly nefarious  
21 because it does not directly affect emissions controls, so it is very difficult to detect.  
22 Instead, when the device detects that the car is in a testing bay, it changes the shift  
23 points of the automatic transmission so that the vehicle operates in a “low rev” mode,  
24 that is, it shifts into the next higher gear sooner than it otherwise would. This  
25 modified shifting scheme effectively falsifies the vehicle’s emissions and fuel  
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1 efficiency results by keeping the engine RPM artificially low, thereby using less fuel  
2 and emitting less carbon dioxide.<sup>1</sup> Conversely, when the vehicle is not in a testing  
3 bay, the defeat device deactivates and allows the vehicle to operate at higher  
4 revolutions per minute such that the vehicle has more power and acceleration, but  
5 also consumes more fuel and emits more carbon dioxide.<sup>2</sup>

7         19. Audi installed the defeat device in at least the vehicles equipped with  
8 one of two automatic transmissions with the internal designations AL 551 and DL  
9 501 through May 2016. The AL 551 transmission belongs to the ZF 8HP family of  
10 eight-speed units Audi sourced from transmission supplier ZF Friedrichshafen,  
11 commonly known as ZF. The DL 501 model Audi sourced from Volkswagen. The  
12 gasoline vehicles that Audi equipped with the AL 551 and DL 501 transmissions—  
13 and, therefore, with the defeat device—include, but may not be limited to, the Audi  
14 A6, A8, Q5, Q7, S4, S5, S6, and S7 models

17         20. Additional reports indicate that Audi executives were aware of this  
18 defeat device and instructed that it be utilized as much as possible to misrepresent the  
19 performance of Audi vehicles.<sup>3</sup> According to these reports, Audi installed this defeat  
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22         <sup>1</sup> *CARB Finds New Audi Defeat Device, German Paper Digs Up Smoking Gun Document*, November 6, 2016,  
23 <http://www.forbes.com/sites/bertelschmitt/2016/11/06/carb-finds-new-audi-defeat-device-german-paper-digs-up-smoking-gun-document/#6ae523791ce8>.

25         <sup>2</sup> *VW Recovery Dealt Blow by Poetsch Probe, Audi Cheating Report*, November 7, 2016,  
26 <https://www.bloomberg.com/news/articles/2016-11-07/vw-recovery-dealt-blow-by-poetsch-probe-audi-cheating-report>.

27         <sup>3</sup> “Volkswagen and Audi management discussed the CO2 defeat-device software in detail during a ‘Summer  
28 Drive’ event in South Africa in the second half of February 2013, according to one person familiar with the situation



1 device in models equipped with the AL 551 transmission, including the A6, A8, and  
2 Q5, as late as May 2016, eight months after public disclosure of the defeat device  
3 utilized by Audi and its parent Volkswagen on “clean diesel” vehicles in September  
4 2015.<sup>4</sup>

6 21. Volkswagen and Audi were aware that emissions and fuel consumption  
7 were decisive factors for customers making purchase decisions. In response, Audi  
8 began representing to consumers that its vehicles consumed less fuel and emitted less  
9 CO<sub>2</sub> than they actually do in normal driving conditions.

11 22. As described above, Audi was able to disguise this deception by  
12 programming its engines with the ability to engage different modes, one of which  
13 used significantly less fuel and emitted significantly less CO<sub>2</sub>, but also delivered  
14 significantly less power. Audi deceptively dubbed this the “warm-up” strategy, a  
15 mode that activates when the Affected Vehicles are started. As long as the “warm-up”  
16 function remains activated, the automatic transmission remains in a “switching  
17 program” that produces a low engine speed, consumes less fuel, and produces less  
18 CO<sub>2</sub>.

21 23. Audi also figured out how to activate this low fuel/low emissions/low

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23 and excerpts from the minutes of the meeting, which were reviewed by THE WALL STREET JOURNAL.  
24 According to the minutes, Axel Eiser, the head of Audi’s powertrain division, said: “the shifting program needs  
25 to be configured so that it runs at 100% on the treadmill but only 0.01% with the customer.” *New Discovery  
Broadens VW Emissions-Cheating Crisis*, November 6, 2016, <http://www.wsj.com/articles/volkswagen-probe-in-germany-extended-to-chairman-1478429066>. [This is an astounding admission of deception.](#)

26 <sup>4</sup> *CARB Finds New Audi Defeat Device, German Paper Digs Up Smoking Gun Document*, November 6, 2016,  
27 <http://www.forbes.com/sites/bertelschmitt/2016/11/06/carb-finds-new-audi-defeat-device-german-paper-digs-up-smoking-gun-document/#6ae523791ce>

1 power mode during governmental tests. Audi engineers concluded that the only time  
2 the Affected Vehicles would run continuously with no steering wheel input would be  
3 when the vehicles were undergoing examination in a lab, on a test bed. The vehicles'  
4 transmission control modules ("TCM") therefore set "shift points" that allow the  
5 vehicles to detect those lab conditions and to produce compliant emission results  
6 under those conditions (known by Volkswagen as the "dyno calibration" mode).  
7 Under these static dynamometer lab conditions (a vehicle treadmill), the defeat device  
8 enables the Affected Vehicles to operate in this low power mode.  
9  
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11 24. This low power mode, also known as the "low CO<sub>2</sub>" program, works by  
12 causing the Affected Vehicles to shift gears early to maintain artificially low engine  
13 revs and emissions.  
14

15 25. *At all other times*—that is, when the Affected Vehicles are actually  
16 being driven under normal conditions—the transmission computer switches to "road  
17 calibration" mode which offers full power to the driver and which results in increased  
18 fuel consumption and greater CO<sub>2</sub> emissions. Indeed, the road calibration mode  
19 activates once the driver turns the steering wheel 15 degrees, something happens  
20 almost immediately under normal driving conditions.  
21

22 26. This defeat device scheme allowed Audi to deceptively misrepresent the  
23 Affected Vehicles' fuel consumption and CO<sub>2</sub> emissions to governmental authorities  
24 and to the consuming public. A vehicle's advertised fuel economy, which is listed on  
25 the "Monroney sticker" or window sticker, is determined by driving a vehicle over  
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1 five standardized driving patterns (or drive cycles), all of which are performed in a  
2 laboratory on a dynamometer where the conditions for all tests can be controlled.  
3  
4 These driving cycles include cold starts, hot starts, highway driving, aggressive and  
5 high speed driving, driving with the air conditioner in use under conditions similar to  
6 a hot day in the summer in Los Angeles and driving in cold temperatures. Data from  
7 the five drive cycles are combined and adjusted for “real world” conditions in a way  
8 to represent “City” driving and “Highway” driving. The “combined” fuel economy is  
9 the average of the City and Highway values with weights of 55% and 45%  
10 respectively. These adjusted and combined values appear on the vehicle’s Monroney  
11 sticker.  
12

13  
14 27. During each of the drive cycles—all of which are performed in a lab,  
15 under the Affected Vehicles’ low power/low emissions/low fuel consumption  
16 mode—the amount of each pollutant is measured. This includes un-combusted or  
17 partially combusted gasoline (hydrocarbons or HC), carbon monoxide (CO) and  
18 carbon dioxide (CO<sub>2</sub>). The amount of carbon produced is then converted to amount  
19 of gasoline which was required to produce the carbon in the exhaust. The amount of  
20 gasoline produced during the tests is divided into the distance driven on the test to  
21 produce the fuel economy.  
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24  
25 28. Based on this equation, as the amount of CO<sub>2</sub> produced increases, the  
26 gasoline used increases and the fuel economy decreases. Therefore, if an Affected  
27 Vehicle produced less CO<sub>2</sub> during laboratory testing, but higher CO<sub>2</sub> when driven on  
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1 road, then the vehicle would have better estimated fuel economy represented on the  
2 Monroney sticker than the vehicle would actually achieve on road.

3  
4 29. This is exactly what happened here. Again, in simple terms, the defeat  
5 device program equips the Affected Vehicles with two modes or personalities. The  
6 “dyno calibration” personality reduces fuel supply and limits revolutions per minute  
7 (“rpms”) per gear, reducing fuel burn and lowering emissions. This was personality  
8 engaged during all of the laboratory testing used to calculate the Affected Vehicles’  
9 purported fuel economy. The “road calibration,” in contrast, personality allows the  
10 engine to turn maximum rpms in each gear and provides the necessary (much higher)  
11 fuel supply required to deliver advertised torque and performance. This is the  
12 personality engaged during all normal driving.

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16 30. There is no question that Audi knew what it was doing. Audi  
17 commissioned its own study, in fact, which found that a vehicles’ fuel consumption  
18 on the road increased by 8.5 percent after the wheel was turned.

19  
20 31. As alleged above, high-placed Audi executives knew precisely how the  
21 defeat device worked, and instructed company employees to utilize it as much as  
22 possible to deceive regulators and the public. Volkswagen and Audi management  
23 discussed the defeat device software in detail, for example, during a “Summer Drive”  
24 event in South Africa in the second half of February 2013. According to the event  
25 minutes, Axel Eiser, then the head of Audi’s powertrain division (and currently the  
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1 head of powertrain development of the entire Volkswagen group) asked: “When will  
2 we have the cycle optimized shift program?” He continued: “The shifting program  
3 shall be designed to be 100% active on the dyno, but only 0.01% in the hands of the  
4 customer.”<sup>5</sup> The implication of this could not be clearer: Audi executives intended to  
5 use, and did in fact use, the defeat device to mislead regulators and consumers by  
6 selectively activating the low power/low emissions/low fuel consumption mode only  
7 in testing conditions. This practice is highly deceptive and illegal.  
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10 32. Plaintiff has suffered damages as a result of his purchase of an Affected  
11 Vehicle, including but not limited to (i) overpayment for a vehicle that is incapable  
12 of performing as represented, (ii) future additional fuel costs, (iii) loss of  
13 performance from future repairs, and (iv) diminution of vehicle value.  
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## 16 V. FRAUDULENT CONCEALMENT ALLEGATIONS

17 33. Plaintiff makes the following specific fraud allegations with as much  
18 specificity as possible at this point in the litigation:  
19

20 a. **Who:** Audi actively concealed the defeat device present in the  
21 Affected Vehicles from Plaintiff and the class members when Audi continued to  
22 manufacture, distribute, sell and lease the Affected Vehicles. Plaintiff is unaware of  
23 and therefore cannot specifically identify the true names and identities of specific  
24  
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26 <sup>5</sup> Kayhan Oezgenc and Jan C. Wehmeyer, *This is How the Manufacturer Cheated on CO<sub>2</sub>*, Bild  
27 am Sonntag (November 5, 2016) [http://www.bild.de/bild-plus/auto/auto-news/audi/so-  
28 schummelte-der-hersteller-bei-co-48621300.bild.html](http://www.bild.de/bild-plus/auto/auto-news/audi/so-schummelte-der-hersteller-bei-co-48621300.bild.html)

1 Audi officials responsible for such decisions, except that Plaintiff can identify Axel  
2 Eiser, the head of Audi’s powertrain division, as having knowledge and intent that  
3 the defeat device be used in Affected Vehicles, in addition to other executives at the  
4 “Summer Drive” event in South Africa in the second half of February 2013.  
5

6           **b. What:** Audi and at least the executives at the “Summer Drive”  
7 event in South Africa in the second half of February 2013, including Axel Eiser,  
8 knew, or were reckless or negligent in not knowing, that the Affected Vehicles  
9 contain the defeat device, as alleged herein. Audi concealed the defeat device from  
10 Plaintiff and the class members they seek to represent and made misrepresentations  
11 about CO2 emissions and fuel efficiency.  
12  
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14           **c. When:** Audi concealed material information regarding the  
15 defeat device in the Affected Vehicles sold and/or leased from at least February  
16 2013, but in likelihood for many years before then—namely, that the reported  
17 carbon dioxide emissions and fuel consumption estimates were false, that Audi had  
18 not disclosed the truth about the defeat device in Affected Vehicles to anyone  
19 outside of Audi, and that Audi had not taken any action to inform consumers about  
20 the true nature of the Affected Vehicles.  
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24           **d. Where:** Audi concealed material information regarding the true  
25 nature of the Affected Vehicles in connection with every sale and lease transaction  
26 involving Affected Vehicles at least in the United States, if not worldwide.  
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1 Plaintiff is aware of no communication, document, or other interaction with anyone  
2 outside of Audi before the date of filing of this Complaint, in which Audi disclosed  
3 the true nature of the defeat device in each and every Affected Vehicle. The  
4 existence of the defeat device in the Affected Vehicles was not disclosed in Audi's  
5 marketing, warranties, documentation, website, or any communications with  
6 Plaintiff and vehicle owners.  
7

8  
9 e. **How:** Audi concealed material information regarding the defeat  
10 device at all times prior to the date of this Complaint, including that the existence of  
11 the defeat device manipulates the performance of the Affected Vehicles. Audi  
12 actively concealed the truth about the existence and nature of the defeat device  
13 from Plaintiff and class members, even though Audi knew that information  
14 regarding the defeat device would be important to a reasonable consumer. Audi  
15 falsely reported the CO2 emissions levels and fuel consumption on the Monroney  
16 labels affixed to the Affected Vehicles and its sales and marketing materials  
17 distributed and viewed by consumers and regulators.  
18  
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20  
21 f. **Why:** Audi concealed material information about the defeat  
22 device in Affected Vehicles for the purpose of inducing Plaintiff and class members  
23 to continue to and repeatedly purchase and/or lease Affected Vehicles, rather than  
24 purchasing and/or leasing competing vehicles. If Audi had disclosed the truth about  
25 the defeat device, or had not used the defeat devices, thus rendering the cars either  
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1 less powerful or less efficient and less environmental friendly—assuming they  
2 could be legally sold at all—then Plaintiff would not have purchased the Affected  
3 Vehicles or he would have paid less.  
4

## 5 VI. TOLLING OF STATUTE OF LIMITATIONS

### 7 A. Fraudulent Concealment Tolling

8 34. Upon information and belief, prior to the date of this Complaint, and  
9 at least as early as February 2013, if not earlier, Audi knew of the defeat device in  
10 the Affected Vehicles, but continued to distribute, sell, and/or lease the Affected  
11 Vehicles to Plaintiff and the class members. In doing so, Audi concealed from or  
12 failed to notify Plaintiff and the class members about the true nature of the Affected  
13 Vehicles. Any applicable statute of limitations has therefore been tolled by Audi's  
14 knowledge, active concealment, and denial of the facts alleged herein.  
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### 18 B. Estoppel

19 35. Audi was under a continuous duty to disclose to Plaintiff and the class  
20 members the existence of the defeat device, which substantially affects the true  
21 character, quality, performance, and nature of the Affected Vehicles. Audi  
22 actively concealed the true character, quality, performance, and nature of the defeat  
23 device in the Affected Vehicles, and Plaintiff and the class members reasonably  
24 relied upon Audi's knowing and active concealment of these facts. Audi is  
25 accordingly estopped from relying on any statute of limitations in defense of this  
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1 action. For these same reasons, Audi is estopped from relying upon any  
2 warranty mileage and age limitations in defense of this action.

3  
4 **C. Discovery Rule**

5 36. The claims for relief alleged herein did not accrue until Plaintiff and  
6 the class members discovered that the Affected Vehicles contained the defeat  
7 device.

8  
9 37. Plaintiff and the class members had no realistic ability to identify  
10 the defeat device until—at the earliest—November 7, 2016, when published reports  
11 surfaced for the first time disclosing the existence of the defeat device.

12  
13 38. Despite their exercise of due diligence, Plaintiff and the class members  
14 were not reasonably able to discover the defeat device until after they purchased or  
15 leased the Affected Vehicles. Accordingly, their claims for relief did not accrue  
16 until they discovered that the defeat device caused the Affected Vehicles to fail  
17 required emissions standards.

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20 **VII. CLASS ACTION ALLEGATIONS**

21 39. Plaintiff brings this action on behalf of himself and all others similarly  
22 situated under Fed. R. Civ. P. 23(b)(2) and (b)(3) on behalf of the following classes  
23 (collectively, the “Classes”):

24  
25 **The Nationwide Class**

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1 All persons or entitles in the United States who are current or  
2 former owners and/or lessees of an Affected Vehicle.<sup>6</sup>

3 **The California Class**

4 All persons or entitles in the state of California who are current or former  
5 owners and/or lessees of an Affected Vehicle.

6 40. Excluded from the Classes are (i) Audi and any entity in which Audi has  
7 a controlling interest, and their legal representatives, officers, directors, employees,  
8 assigns and successors; (ii) the Judge to whom this case is assigned and any member  
9 of the Judge's staff or immediate family; and (iii) Class Counsel.  
10

11 41. Plaintiff seeks only damages and injunctive relief on behalf of himself  
12 and the Class Members. Plaintiff disclaims any intent or right to seek any  
13 recovery in this action for personal injuries suffered by Plaintiff and/or the Class  
14 Members.  
15

16 42. Certification of Plaintiff's claims for class-wide treatment is  
17 appropriate because Plaintiff can prove the elements of his claims on a class-wide  
18 basis using the same evidence as would be used to prove those elements in  
19 individual actions alleging the same claim.  
20

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

24 44. **Numerosity**. Federal Rule of Civil Procedure 23(a)(1): The members  
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26 <sup>6</sup> At present, on information and belief, Affected Vehicles include Audi A6, A8, Q5 and Q7 vehicles equipped with  
27 Audi's 3.0 liter gasoline engine and automatic transmission. Discovery and further investigation may reveal  
28 additional models of vehicles to be included in the definition of Affected Vehicles.

1 of the Classes are so numerous and geographically dispersed that individual joinder  
2 of all Class members is impracticable. While Plaintiff is informed and believe that  
3 there are at least hundreds-of-thousands of members of the Classes, the precise  
4 number of Class members is unknown to Plaintiff, but may be ascertained from  
5 Audi's books and records. Audi sold more than 270,000 Affected Vehicles in the  
6 United States from 2013 to the present, including thousands in the state of  
7 California. Class members may be notified of the pendency of this action by  
8 recognized, Court-approved notice dissemination methods, which may include U.S.  
9 mail, electronic mail, Internet postings, and/or published notice.  
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13 45. **Commonality.** Common questions of law and fact exist as to all Class  
14 Members, as required by Fed. R. Civ. P. 23(a)(2), and include:

15 a. whether Audi designed, marketed, distributed, leased, and/or  
16 sold the Affected Vehicles in the United States and California;

17 b. whether the Affected Vehicles that Audi designed, marketed,  
18 distributed, leased, and/or sold contained a defeat device;

19 c. whether Audi knew of the defeat device at the time of  
20 designing, marketing, distributing, leasing, and/or selling the Affected Vehicles;

21 d. whether Audi knew that its representations regarding the  
22 emissions and/or fuel efficiency of the Affected Vehicles were false at the time of  
23 designing, marketing, distributing, leasing, and/or selling the Affected Vehicles;  
24  
25  
26  
27

1 e. whether Audi's conduct violates consumer protection statutes  
2 and other laws as asserted herein;

3  
4 f. whether Audi's actions violate California consumer protection  
5 laws;

6 g. whether Plaintiff and the other Class members overpaid for their  
7 Affected Vehicles;

8  
9 h. whether Plaintiff and the other Class members are entitled to  
10 equitable relief, including, but not limited to, restitution or injunctive relief; and

11  
12 i. whether Plaintiff and the other Class members are entitled to  
13 damages and other monetary relief and, if so, in what amount.

14 46. **Typicality.** Plaintiff's claims are typical of the claims of the Class  
15 Members whom Plaintiff seeks to represent under Fed. R. Civ. P. 23(a)(3),  
16 because Plaintiff and each Class Member purchased an Affected Vehicle and were  
17 comparably injured through Audi's wrongful conduct as described above.  
18

19  
20 47. **Adequacy.** Plaintiff will fairly and adequately represent and protect the  
21 interests of the Class Members as required by Fed. R. Civ. P. 23(a)(4). Plaintiff's  
22 interests do not conflict with the interests of the Class Members. Further, Plaintiff  
23 has retained counsel competent and experienced in complex class action litigation,  
24 including vehicle defect litigation, and Plaintiff intends to prosecute this action  
25 vigorously. Therefore, the interests of the Class Members will be fairly and  
26  
27

1 adequately protected.

2           48. **Predominance of Common Issues**. A class action is appropriate  
3  
4 under Fed. R. Civ. P. 23(b)(3) because common questions of law and fact  
5 predominate over any questions affecting only individual members.

6           49. **Declaratory and Injunctive Relief**. Federal Rule of Civil Procedure  
7  
8 23(b)(2): Audi has acted or refused to act on grounds generally applicable to  
9 Plaintiff and the other members of the Classes, thereby making appropriate final  
10 injunctive relief and declaratory relief, as described below, with respect to each  
11 Class as a whole.

12  
13           50. **Superiority**. Federal Rule of Civil Procedure 23(b)(3): A class action  
14 is superior to all other available means for fairly and efficiently adjudicating the  
15 controversy. In this regard, the Class Members' interests in individually  
16 controlling the prosecution of separate actions is low given the magnitude, burden,  
17 and expense of individual prosecutions against a large corporation such as Audi. It  
18 is desirable to concentrate this litigation in this forum to avoid burdening the courts  
19 with individual lawsuits. Individualized litigation presents a potential for  
20 inconsistent or contradictory judgments, and also increases the delay and expense to  
21 all parties and the court system presented by the legal and factual issues of this case.  
22 By contrast, the class action procedure here will have no management difficulties.  
23  
24 The Classes are ascertainable and the same common documents and testimony  
25  
26  
27

1 will be used to prove Plaintiff's claims as well as the claims of the Class  
2 Members. Finally, proceeding as a class action provides the benefits of single  
3 adjudication, economies of scale, and comprehensive supervision by a single court.  
4

5 **FIRST CLAIM**  
6 **Violation of Magnuson Moss Warranty Act**  
7 **(15 U.S.C. §§ 2301, et seq.)**  
8 **(On Behalf of the Nationwide Class)**

9 51. Plaintiff incorporates by reference all the allegations set forth in this  
10 Complaint as though fully set forth herein.

11 52. Plaintiff brings this Count on behalf of himself and the Nationwide  
12 Class.  
13

14 53. This Court has jurisdiction to decide claims brought under the  
15 Magnuson-Moss Warranty Act (for the purpose of this Count, the "Act") by virtue  
16 of 28 U.S.C. § 1332(a)-(d).  
17

18 54. Defendants are "supplier[s]" and "warrantor[s]" within the meaning of  
19 15 U.S.C. § 2301(4) and (5) because the company regularly sells Audi vehicles  
20 accompanied by the written Limited Warranties.  
21

22 55. Plaintiff and the other Class members are "consumers" who purchased  
23 "consumer products" for purposes of 15 U.S.C. § 2301(1) and (3) because they  
24 purchased Affected Vehicles for personal, family, or household purposes.  
25

26 56. The Affected Vehicles are "consumer products" within the meaning of  
27 the Act. 15 U.S.C. § 2301(1).  
28

1           57. The Act provides a cause of action for any consumer who is damages by  
2 the failure of a warrantor to comply with a written or implied warranty. 15 U.S.C. §  
3 2310(d)(1).  
4

5           58. The amount in controversy of the Plaintiff’s individual claims meets or  
6 exceeds \$25.00 in value. In addition, the amount in controversy meets or exceeds  
7 \$50,000 in value (exclusive of interest and costs) on the basis of all claims to be  
8 determined in this suit.  
9

10           59. Under the Act, damaged “consumers” have a private cause of action  
11 against any warrantor that fails to comply with a written or implied warranty.  
12

13           60. Audi provided Plaintiff and the Nationwide Class with two express  
14 warranties: (1) “bumper-to-bumper” limited express warranty coverage for a  
15 minimum of four years or 50,000 miles, whichever comes first, and which covers  
16 emission related repairs; and (2) a federal emissions warranty that covers the repair  
17 and replacement of all emission control and emission-related parts for two years or  
18 24,000 miles (whichever comes first), and covers specified major emission control  
19 components, including catalytic converters, electronic emissions control unit or  
20 computer and on-board emissions diagnostic device or computer for 8 years or  
21 80,000 miles (whichever comes first). These express warranties constitute written  
22 warranties within the meaning of 15 U.S.C. § 2301(6). The Affected Vehicles’  
23 implied warranties are covered by 15 U.S.C. § 2301(7).  
24  
25  
26  
27  
28

1           61. The terms of written warranties and implied warranty became part of the  
2 basis of the bargain between Plaintiff and all other Class members when deciding to  
3 purchase an Affected Vehicle.  
4

5           62. Audi breached these written and implied warranties as described in  
6 detail above. Without limitation, the Affected Vehicles share a common design  
7 defect in that they emit more carbon dioxide than: (a) is allowable under the  
8 applicable regulations, and (b) Audi represented were emitted to their customers, the  
9 public, and regulators.  
10

11           63. Plaintiff and each of the other Nationwide Class members have had  
12 sufficient direct dealings with either Audi or its agents (including Audi dealerships)  
13 to establish privity of contract between Audi, on the one hand, and Plaintiff and  
14 each of the other Nationwide Class members, on the other hand. Nonetheless,  
15 privity is not required here because Plaintiff and each of the other Nationwide Class  
16 members are intended third-party beneficiaries of contracts between Audi and its  
17 dealers, and specifically, of Audi's implied warranties. The dealers were not  
18 intended to be the ultimate consumers of the Affected Vehicles and have no rights  
19 under the warranty agreements provided with the Affected Vehicles; the warranty  
20 agreements were designed for and intended to benefit the consumers only.  
21

22           64. Affording Audi a reasonable opportunity to cure its breach of written  
23 warranties would be unnecessary and futile here. At the time of sale or lease of each  
24



1 Affected Vehicle, Audi knew, should have known, or was reckless in not knowing  
2 of its misrepresentations concerning the Affected Vehicles' inability to perform as  
3 warranted, but nonetheless failed to rectify the situation and/or disclose the design  
4 defect. Under the circumstances, the remedies available under any informal  
5 settlement procedure would be inadequate and any requirement that Plaintiff resort  
6 to an informal dispute resolution procedure and/or afford Audi a reasonable  
7 opportunity to cure its breach of warranties is excused and thereby deemed satisfied.  
8  
9

10 65. As a direct and proximate result of Audi's breach of the written  
11 warranties and the implied warranty of merchantability, Plaintiff and Class members  
12 have suffered damages in an amount to be determined at trial.  
13

14 66. Plaintiff, individually and on behalf of the Nationwide Class, seek all  
15 damages permitted by law, including compensation for the monetary difference  
16 between the Affected Vehicles as warranted and as sold; compensation for the  
17 reduction in resale value; the cost of purchasing, leasing, or renting replacement  
18 vehicles, along with all other incidental and consequential damages, statutory  
19 attorney fees, and all other relief allowed by law.  
20  
21

22 **SECOND CLAIM**  
23 **Fraudulent Concealment**  
24 **(On Behalf of the Nationwide Class, or, in the Alternative, the California Class)**

25 67. Plaintiff incorporates all allegations set forth in this Complaint as  
26 though fully set forth herein.  
27

1           68. Plaintiff brings this Count on behalf of the Nationwide Class or, in the  
2 alternative, on behalf of the California Class, against all Defendants..  
3

4           69. Audi concealed the defeat device that changes the shift points of the  
5 automatic transmission so that the Affected Vehicles operate in a “low rev” mode,  
6 that is, it shifts into the next higher gear sooner than it otherwise would, which  
7 effectively falsifies the Affected Vehicles’ emissions and fuel efficiency results by  
8 keeping the engine RPM artificially low, thereby using less fuel and emitting less  
9 carbon dioxide. Audi also concealed that, when the vehicle is not in a testing bay,  
10 the defeat device deactivates and allows the vehicle to operate at higher revolutions  
11 per minute such that the vehicle has more power and acceleration, but consumes  
12 more fuel and emits more carbon dioxide.  
13  
14  
15

16           70. As alleged herein, Defendants intentionally concealed and suppressed  
17 material facts concerning the illegality and quality of the Affected Vehicles in order  
18 to defraud and mislead both regulators and the Class about the true nature of the  
19 Affected Vehicles. As Audi intended, the result of installing its defeat device was to  
20 enable Defendants to pass emission testing by way of deliberately inducing false  
21 readings and thus successfully sell and/or lease thousands of vehicles to unwitting  
22 consumers.  
23  
24

25           71. Audi made material representations and statements of fact to Plaintiff  
26 and the Classes that resulted in Plaintiff and the Classes reasonably believing the  
27

28

1 state of affairs to be other than what it actually was, such that the Affected  
2 Vehicles had functioning emissions systems which operated within legal limits  
3 during normal driving conditions, which is not the case. Defendants also represented  
4 that Audi's Affected Vehicles actually emitted the amount of CO<sub>2</sub> as stated on the  
5 Monroney sticker and that the Affected Vehicles actually had certain accurately  
6 calculated fuel economy standards, which is also not the case.  
7  
8

9 72. Audi executives were aware of the defeat device and instructed that it  
10 be utilized as much as possible to misrepresent the performance of the Affected  
11 Vehicles.  
12

13 73. Audi intended that Plaintiff and the other members of the Classes rely  
14 on the misrepresentations and omissions described above, so that Plaintiff and other  
15 class members would purchase the Affected Vehicles.  
16

17 74. The truth about the defeat device and Audi's manipulations of the "low  
18 rev" mode was only known to Audi; Plaintiff and the Class members did not know  
19 of these facts, and Audi actively concealed these facts from them.  
20

21 75. Audi had a duty to disclose the truth about the defeat device and Audi's  
22 "low rev" mode manipulations because Audi (i) possessed exclusive knowledge  
23 about the defeat device and the manipulations, and (ii) intentionally concealed the  
24 foregoing from Plaintiff and all members of the Classes.  
25

26 76. Plaintiff and all members of the Classes reasonably relied upon  
27  
28

1 Audi's deception. They had no way of knowing that Audi's representations were  
2 false and/or misleading. As consumers, Plaintiff and the Class members could not  
3 unravel Audi's deceptions on their own. Rather, Audi intended to deceive Plaintiff  
4 and the Class by concealing the true facts about the defeat device and Audi's "low  
5 rev" mode manipulations.  
6

7  
8 77. Audi's false representations and omissions were material to  
9 consumers, because they concerned the exhaust and mileage performance of the  
10 Affected Vehicles, as well as the legality, marketing features, and overall  
11 performance of the Affected Vehicles.  
12

13 78. The foregoing conduct constitutes fraudulent concealment or fraud by  
14 concealment under the laws of all of the states and the District of Columbia.  
15

16 79. Had Audi disclosed the omitted material or not misrepresented the  
17 characteristics of the Affected Vehicles, Plaintiff and members of the Classes would  
18 not have purchased or leased the Affected Vehicles or would have paid less for  
19 them.  
20

21 80. The foregoing acts, omissions and practices proximately caused  
22 Plaintiff and the other members of the Classes to suffer actual damages in the  
23 form of, inter alia, loss of the benefit of the bargain, diminution of value, the cost  
24 to repair each Affected Vehicle's engine to remove the effects of the CO2 Defeat  
25 Device without compromising each Affected Vehicle's performance, and excess  
26  
27

1 cost for gasoline expenditures.

2 81. Audi's conduct was knowing, intentional, and malicious, and  
3 demonstrated a complete lack of care and recklessness and was in conscious  
4 disregard for the rights of Plaintiff and the Classes.  
5

6 82. As a result of this wrongful conduct, Plaintiff and the Classes have been  
7 damaged in an amount to be proven at trial, including, but not limited to,  
8 actual damages, punitive damages, equitable relief, diminution of value, and  
9 reasonable attorneys' fees.  
10

11 83. Audi's conduct was unfair as offensive to public policy, unscrupulous,  
12 unethical and immoral, and caused substantial injury to Plaintiff and the Classes.  
13  
14

15 **THIRD CLAIM**

16 **Violation of the Song-Beverly Consumer Protection Act, Breach of Express  
17 Warranty**

18 **(Cal. Civ. Code §§ 1790, et seq.)**

19 **(On Behalf of the California Class)**

20 84. Plaintiff incorporates by reference all allegations in this Complaint as  
21 though fully set forth herein.

22 85. Plaintiff brings this Count on behalf of himself and the California Class.

23 86. Plaintiff and the other members of the California Class who purchased  
24 Affected Vehicles in California are "buyers" within the meaning of Cal. Civ. Code  
25 § 1791.

26 87. The Affected Vehicles are "consumer goods" within the meaning of  
27

1 Cal. Civ. Code § 1791(a).

2 88. Audi is the “manufacturer” of the Affected Vehicles within the meaning  
3 of Cal. Civ. Code § 1791(j).  
4

5 89. Audi impliedly warranted to Plaintiff and the other members of the  
6 California Class that the Affected Vehicles were “merchantable” within the  
7 meaning of Cal. Civ. Code §§ 1791.1(a) & 1792; however, the Affected Vehicles do  
8 not have the quality that a buyer would reasonably expect.  
9

10 90. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of  
11 merchantability” or “implied warranty that goods are merchantable” means that the  
12 consumer goods meet each of the following:  
13

- 14 (1) Pass without objection in the trade under the contract description.  
15 (2) Are fit for the ordinary purposes for which such goods are used.  
16 (3) Are adequately contained, packaged, and labeled.  
17 (4) Conform to the promises or affirmations of fact made on the  
18 container or label.  
19

20 91. The Affected Vehicles would not pass without objection in the  
21 automotive trade because they share a common design defect in that they are  
22 equipped with “defeat devices.” These defeat devices are designed to secretly limit  
23 emissions and increase fuel efficiency when the vehicles are being subject to  
24 regulatory emissions and fuel efficiency testing. However, when the Affected  
25 Vehicles are in regular use on the road, they emit a substantially increased amount  
26  
27  
28

1 of noxious gasses.

2 92. Affected Vehicles are not adequately labeled because the labeling fails  
3 to disclose the fact that they are defective.  
4

5 93. In the various channels of information through which Audi sold  
6 Affected Vehicles, Audi failed to disclose material information concerning the  
7 Affected Vehicles, which it had a duty to disclose. Audi had a duty to disclose the  
8 defect because, as detailed above: (a) Audi knew about the defect; (b) Audi had  
9 exclusive knowledge of material facts not known to the general public, Plaintiff, or  
10 the other California Class members; and (c) Audi actively concealed material facts  
11 concerning the fact that the Affected Vehicles were equipped with defeat devices  
12 from the general public, Plaintiff, and the California Class members. As detailed  
13 above, Audi knew the information concerning the defect at the time of advertising  
14 and selling the Affected Vehicles, all of which was intended to induce consumers to  
15 purchase the Affected Vehicles.  
16  
17  
18  
19

20 94. Audi breached the implied warranty of merchantability by  
21 manufacturing and selling Affected Vehicles that are defective. Furthermore, this  
22 defect has caused Plaintiff and the other members of the California Class to not  
23 receive the benefit of their bargain and have caused the Affected Vehicles to  
24 depreciate in value.  
25

26 95. Plaintiff and the other members of the California Class have been  
27

1 damaged as a result of the diminished value of Audi's products.

2 96. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff and other members  
3 of the California Class are entitled to damages and other legal and equitable relief  
4 including, at their election, the purchase price of their Affected Vehicles, or the  
5 overpayment or diminution in value of their Affected Vehicles.  
6

7  
8 97. Under Cal. Civ. Code § 1794, Plaintiff and the other members of the  
9 California Class are entitled to costs and attorneys' fees.  
10

11 **FOURTH CLAIM**  
12 **Violation of the California Consumer Legal Remedies Act**  
13 **(Cal. Civ. Code §§ 1750, et seq.)**  
14 **(On Behalf of the California Class Against All Defendants)**

15 98. Plaintiff incorporates the allegations set forth in this Complaint as if  
16 fully set forth herein.

17 99. Plaintiff brings this Count on behalf of the California Class.

18 100. Plaintiff and the other members of the California Class were deceived  
19 by Audi's failure to disclose that the Affected Vehicles share a uniform defect in  
20 that they are equipped with "defeat devices." These defeat devices are designed to  
21 secretly limit emissions and increase fuel efficiency when the vehicles are being  
22 subject to regulatory emissions and fuel efficiency testing. However, then the  
23 Affected Vehicles are in regular use on the road, they emit a substantially increased  
24 amount of noxious gasses.  
25  
26  
27



1           101. Audi engaged in unfair or deceptive acts or practices when, in the  
2 course of its business it, among other acts and practices, knowingly made materially  
3 incomplete representations as to the characteristics, uses and benefits of the  
4 Affected Vehicles.  
5

6           102. In the various channels of information through which Audi sold  
7 Affected Vehicles, Audi failed to disclose material information concerning the  
8 Affected Vehicles, which it had a duty to disclose. Audi had a duty to disclose the  
9 defect because, as detailed above, (a) Audi knew about the defeat device equipped  
10 on the Affected Vehicles; (b) Audi had exclusive knowledge of material facts not  
11 known to the general public, Plaintiff, or the other California Class members; and  
12 (c) Audi actively concealed material facts concerning the defeat device from the  
13 general public, Plaintiff, and the California Class members. As detailed above, Audi  
14 knew the information concerning the defect at the time of advertising and selling the  
15 Affected Vehicles, all of which was intended to induce consumers to purchase the  
16 Affected Vehicles.  
17  
18  
19  
20

21           103. Audi intended for the Plaintiff and the other California Class members  
22 to rely on it to provide adequately design, and adequately manufactured  
23 automobiles and to honestly and accurately reveal the problems described  
24 throughout this Complaint.  
25

26           104. Audi intentionally failed or refused to disclose the defect to consumers.  
27  
28

1           105. Audi’s conduct constitutes unfair acts or practices as defined by the  
2 California Consumer Legal Remedies Act (the “CLRA”), Cal. Civ. Code §§ 1750,  
3 et seq.  
4

5           106. As alleged herein, Audi made numerous representations and/or  
6 omissions concerning the benefits, efficiency, performance, safety, legality,  
7 compliance, fuel efficiency and nature of the Affected Vehicles that were  
8 misleading.  
9

10           107. In purchasing or leasing the Affected Vehicles, Plaintiff and Class  
11 members were deceived by Audi’s failure to disclose that the Affected Vehicles  
12 were equipped with a defeat device such that they were not compliant with EPA and  
13 California emissions standards.  
14

15           108. Audi’s conduct, as described herein, was and is in violation of the  
16 CLRA. Audi’s conduct violates at least the following enumerated CLRA  
17 provisions:  
18

- 19
- 20           a. Cal. Civ. Code § 1770(a)(5): Representing that goods have  
21 characteristics, uses, and benefits which they do not have;
  - 22           b. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a  
23 particular standard, quality, or grade, if they are of another;
  - 24           c. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to  
25 sell them as advertised; and  
26  
27

1 d. Cal. Civ. Code § 1770(a)(16): Representing that goods have been  
2 supplied in accordance with a previous representation when they  
3 have not.  
4

5 109. The foregoing acts, omissions and practices proximately caused  
6 Plaintiff and the other members of the Class to suffer actual damages in the form of,  
7 inter alia, loss of the benefit of the bargain, diminution of value, the cost to repair  
8 each Affected Vehicle's engine to remove the effects of the defeat device without  
9 compromising each Affected Vehicle's performance, and excess cost for increased  
10 gasoline expenditures.  
11

12  
13 110. Plaintiff and the other California Class members have therefore suffered  
14 injury in fact and actual damages, including lost money or property, as a result of  
15 Audi's material omissions because they paid inflated purchase prices for the  
16 Affected Vehicles.  
17

18  
19 111. Plaintiff and the California Class seek an order enjoining Audi's unfair  
20 or deceptive acts or practices, equitable relief, an award of attorneys' fees and costs  
21 under Cal. Civ. Code § 178(e), and any other just and proper relief available under  
22 the CLRA.  
23

24 112. In accordance with section 1782(a) of the CLRA, Plaintiff's counsel, on  
25 behalf of Plaintiff, will serve Audi with notice of their alleged violations of Cal.  
26 Civ. Code § 1770(a) relating to the Affected Vehicles purchased by Plaintiff and  
27

1 California Class members, and demand that Audi correct or agree to correct the  
2 actions described therein within thirty (3) days of such notice. If Audi fails to do  
3 so, Plaintiff will amend this Complaint as of right (or otherwise seek leave to amend  
4 the Complaint) to include compensatory and monetary damages to which Plaintiff  
5 and Class members are entitled.  
6

7  
8 113. Audi's conduct described herein is fraudulent, wanton, and malicious  
9 and was in conscious disregard for the rights of Plaintiff and the Class.

10 114. Audi's violations present a continuing risk to Plaintiff as well as to  
11 the general public. Audi's unlawful acts and practices complained of herein affect  
12 the public interest.  
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of himself and members of the proposed  
16 Classes, pray for judgment as follow:  
17

18 A. Certification of the Classes under Federal Rule of Civil Procedure 23  
19 and appointment of Plaintiff as representatives of the Classes and his counsel as  
20 Class counsel;  
21

22 B. Compensatory and other damages identified herein;

23 C. Awarding restitution and disgorgement of Audi's revenues or profits  
24 to Plaintiff and the proposed Classes as permitted by applicable law;  
25  
26  
27

1 D. An Order requiring Audi to cease and desist from engaging in  
2 wrongful conduct and to engage in a corrective advertising campaign;

3  
4 E. Statutory pre-judgment and post-judgment interest on any amounts;

5 F. Payment of reasonable attorneys' fees and recoverable litigation  
6 expenses as may be allowable under applicable law; and

7  
8 G. Such other relief as the Court may deem just and proper.

9  
10 **JURY DEMAND**

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

12 Date: November 22, 2016

Respectfully submitted,

13  
14 /s/ Natasha N. Serino

Natasha N. Serino, Esq.

15 LAW OFFICES OF ALEXANDER M.  
16 SCHACK

17 16870 W. Bernardo Drive, #400

San Diego, CA 92128

18 (858) 485-6535 (858) 485-0608 fax

19 natashaserino@amslawoffice.com

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

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

**I. (a) PLAINTIFFS**

CARL BARBATA, JR., individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Natasha N. Serino (284711), Law Offices of Alexander M. Schack  
16870 West Bernardo Drive, Suite 400, San Diego, CA 92127  
(858) 485-6535

**DEFENDANTS**

AUDI OF AMERICA, LLC, and AUDI AG

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

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

Attorneys (If Known)

**'16CV2875 L MDD**

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

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

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332(d); 28 U.S.C. Section 1391

Brief description of cause:  
Fraudulent Concealment of Vehicle Defect

**VII. REQUESTED IN COMPLAINT:**

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

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 11/22/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Natasha N. Serino

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_