**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF MICHIGAN**

JASON COUNTS, DONALD KLEIN, OSCAR ZAMORA, DEREK LONG, BASSAM HIRMIZ, JASON SILVEUS, JOHN MISKELLY, THOMAS HAYDUK, CHRISTOPHER HEMBERGER, and JOSHUA RODRIGUEZ, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

GENERAL MOTORS LLC, ROBERT BOSCH GMBH, and ROBERT BOSCH LLC,

Defendants.

No. 1:16-CV-12541-TLL-PTM

Chief Justice Thomas L. Ludington
Magistrate Judge Patricia T. Morris

[Leave to file granted on June 6, 2018 pursuant to Dkt. 93 and seal granted on April 6, 2018, Dkt. 80.]

**JURY TRIAL DEMANDED**

# FIRST AMENDED CLASS ACTION COMPLAINT

[REDACTED VERSION OF DOCUMENT(S) TO BE SEALED]

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Plaintiffs Jason Counts, Donald Klein, Oscar Zamora, Derek Long, Bassam Hirmiz, Jason Silveus, John Miskelly, Thomas Hayduk, Christopher Hemberger, and Joshua Rodriguez, 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. This is what General Motors (GM) promised:

2. As explained in detail below, "clean diesel" is not what GM delivered. In contrast to GM's promises, scientifically valid emissions testing has revealed that the 2014-2015 Cruze diesel models emit levels of NOx many times higher than (i) their gasoline counterparts, (ii) what a reasonable consumer would expect, (iii) what GM had advertised, (iv) the Environmental Protection Agency's

maximum standards, and (v) the levels set for the vehicles to obtain a Certificate of Conformity that allows them to be sold in the United States. Further, the vehicles' promised power, fuel economy, and efficiency is obtained only by turning off or turning down emissions controls when the software in these vehicles senses they are not in an emissions-testing environment.

3. In the last two years, there have been major scandals involving diesel vehicles made by all of the leading diesel manufacturers, including Volkswagen, Audi, Porsche, Mercedes, and Fiat Chrysler Automobiles (FCA). Volkswagen pled guilty to criminal violations of the Clean Air Act; Mercedes is under investigation by the Department of Justice; FCA has been sued by the EPA for violating the Clean Air Act for improper emissions in tens of thousands of 2014-2016 Dodge Ram 1500 and Jeep Grand Cherokee EcoDiesels; and GM is the subject of a lawsuit concerning the emissions in its Silverado and Sierra trucks. The diesel vehicles made by these manufacturers all have a common flaw: they evade emissions standards with the help of certain software (all made by Bosch) that turns off or turns down emission controls when the vehicles sense that they are not in a test environment.

4. How and why do diesel vehicle manufacturers cheat? 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.

5. As Bob Lutz, former head of product development for GM from 2001 to 2009, told Forbes in February 2016, "'When you do everything you are supposed to do to meet the emissions standards with diesel,' you degrade the performance and the fuel economy, and drive up the cost and then you start to wonder why you are doing it in the first place."[1]

6. One byproduct of diesel combustion is NOx, which generally describes two primary compounds comprised of nitrogen and oxygen atoms, nitric oxide, and nitrogen dioxide. These compounds are formed in the cylinder of the engine during the high temperature combustion process. 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 serious respiratory illnesses and premature death due to respiratory-related or cardiovascular-related effects. The U.S. government, through the EPA, has passed and enforced laws designed to protect U.S. citizens from NOx and certain other chemicals and agents known to cause disease in

[1] Exhibit 1, David Kiley, *Bob Lutz: GM Knew VW's Vehicles Couldn't Pass California Emissions Tests,* Forbes (Feb. 16, 2016), https://www.forbes.com/sites/davidkiley5/2016/02/16/bob-lutz-gm-knew-vws-vehicles-couldnt-pass-california-emissions-tests/#1452774b1c56.

humans. NO2, which is the pollutant that NOx is converted to in the atmosphere, is one of the seven criteria pollutants that the Clean Air Act establishes as "wide-spread pollutants that were considered harmful to the public and environment." The National Ambient Air Quality Standards, which form the backbone of the clean air regulations designed to protect human health and the environment from criteria pollutants, regulate these criteria pollutants. Regulation of NOx from diesel engines is one way that the EPA controls ambient concentrations of this harmful pollutant.

7. Automobile manufacturers must abide by these laws and must adhere to EPA rules and regulations. The state claims in this case are not based on these laws but on deception aimed at consumers.

8. The Energy Independence and Security Act (EISA) of 2007 mandated a 40% increase in fuel economy by 2020. Tougher fuel economy standards were set to start for model year 2011 vehicles. Likewise, in Europe new stricter standards were also looming. Automobile manufacturers began planning to meet these standards. Auto manufacturers saw that the stricter standards could be met through electric cars, hybrids or diesels, and saw a market for tens of millions of cars that could be marketed as vehicles that met the new standards. In response to this enormous market, almost all of the major automobile manufacturers rushed to develop "clean diesel" vehicles and promoted these new diesel vehicles as

environmentally friendly and clean. They all marketed the diesel vehicles as having better fuel economy than their gasoline counterparts. BMW, Volkswagen, Mercedes, Audi, GM, and FCA began marketing diesel cars and trucks as more "powerful" than their gasoline counterparts, but also as an environmentally friendly alternative to gasoline vehicles. And the marketing worked, as over two million diesel vehicles were purchased between 2007 and 2016 in the United States and over ten million in Europe.

9. The green bubble with respect to diesel vehicles began to burst on September 18, 2015, when the EPA issued a Notice of Violation of the Clean Air Act (the "First NOV") to Volkswagen Group of America, Audi AG, and Volkswagen America for installing illegal "defeat devices" in 2009-2015 Volkswagen and Audi diesel vehicles equipped with 2.0-liter diesel engines. A defeat device, as defined by the EPA, is any apparatus that unduly reduces the effectiveness of emission control systems under conditions a vehicle may reasonably be expected to experience on the road. The EPA found that the Volkswagen/Audi defeat devices allowed the vehicles to pass emissions testing, while in the real world these vehicles polluted far in excess of emissions standards. The California Air Resources Board also announced that it had initiated an enforcement investigation of Volkswagen pertaining to the vehicles at issue in the First NOV.

10. On September 22, 2015, Volkswagen announced that 11 million diesel vehicles worldwide were installed with the same defeat device software that had evaded emissions testing by U.S. regulators. Volkswagen pled guilty to criminal charges, paid billions in fines, and settled civil class actions for over ten billion dollars.[2]

11. Volkswagen wasn't alone—soon, government agencies began to reveal that many manufacturers, both in the United States and in Europe, had produced dozens of models that were exceeding emissions standards. On December 2, 2016, certain of Plaintiffs' counsel in this case, based on the same type of expert testing and investigation conducted in this case, filed a class action alleging that FCA's Dodge Ram and Jeep Grand Cherokee EcoDiesels were exceeding emissions standards and producing emissions beyond that a reasonable consumer would expect to be produced by "Eco" vehicles. On January 12, 2017, essentially confirming the work of Plaintiffs' counsel and expert testing, the EPA issued a Notice of Violation to FCA because it had cheated on its emissions certificates with respect to its Dodge Ram and Jeep Grand Cherokee EcoDiesel vehicles. And on May 23, 2017, the United States filed a civil suit in the Eastern District of Michigan against FCA alleging violations of the Clean Air Act (E.D.

[2] Exhibit 2, Nathan Bomey, *Volkswagen Emission Scandal Widens: 11 Million Cars Polluting*, USA Today (Sept. 22, 2015), http://www.usatoday.com/story/money/cars/2015/09/22/volkswagen-emissions-scandal/72605874/.

Mich. No. 17-cv-11633). Many of the defeat devices listed in the Notice of Violation were identified by Plaintiffs' counsel ahead of the notice. In Europe, watchdog groups, NGOs, and government agencies have cited virtually every manufacturer, including GM, for violating the lower European standards.

12. 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, GM developed a diesel engine for the Cruze.

13. The Cruze's top competitor was the Volkswagen Jetta TDI. GM knew as early as 2009 that the Volkswagen vehicles could not meet California emissions standards.[3] But GM went ahead with Cruze diesel—again in the words of Bob Lutz—"just to prove we could."[4]

14. The Cruze diesel for 2014 and 2015 were designed using the Opel engine platform. [redacted][5]

[3] Exhibit 1.

[4] *Id.*

[5] GMCOUNTS000022880. All references to "GMCOUNTS" are to documents produced by GM in this litigation. If the Court wishes to review GM's documents cited herein, Plaintiffs will provide them *in camera* at the Court's request.

15. [redacted] [6]

16. In order to appeal to environmentally conscious consumers, GM marketed its Cruze diesel technology as a process that ensured emissions resulted in a "clean diesel" and that its emissions were "below strict U.S. environmental standards."

17. GM's representations to consumers are deceptive and false. GM has programmed its Cruze to turn off or otherwise limit the effectiveness of the emission reduction systems during driving conditions below 50ºF and above 85ºF, and emissions exceed U.S. limits by 1.8 to 13.8 times in other real-world driving conditions.

18. Recently, a German environmental group issued a report indicating that GM's Opel model uses a device to sense when a vehicle is undergoing emissions testing but that in normal driving conditions the Opel emits NOx at levels that far exceed European emissions standards.

19. Testing has revealed that GM's 2014-2015 Cruze diesel does 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 well exceeded emissions standards.

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[6] GMCOUNTS000052667.

20. Testing also reveals that GM intentionally defeats emissions controls when the Opel is on the road. The drastic change in emission controls at high and low speeds is indicative of the use of a defeat device. This contrast demonstrates that GM has programmed its emission systems to reduce effectiveness or turn off altogether when the vehicle is on the road. And this means that when GM cars are tested in the laboratory, they use a defeat device to obtain test results that appear to pass emissions standards.

21. 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 that may reasonably be expected to be encountered in normal use. 40 C.F.R. § 86.004-2. Thus, GM has perpetrated a gross deception on Plaintiffs and members of the proposed Class, who GM told were buying low-emission, efficient, Earth-friendly vehicles.

22. GM manufactures, designs, markets, sells, and leases the Cruze "clean diesel" vehicle as if it were a "reduced emissions" car that complies with all applicable regulatory standards, when in fact, this GM vehicle is not "clean diesel" and emits 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."

23. During the week of May 9, 2016, GM's Opel division announced it would recall cars in Germany because of the German governments' finding that real-world testing produced higher NOx emissions than laboratory testing. The list of cars deemed by the German government to have excessive NOx emissions includes GM's Chevy Cruze and GM's Opel Zafira.

24. GM never disclosed to consumers that its Cruze diesel engines may be "clean" diesels in very limited circumstances, but are "dirty" diesels under most driving conditions. GM never disclosed that it prioritizes engine power and profits over people. GM never disclosed that its vehicle's emissions materially exceeded the emissions from gasoline-powered vehicles, that the emissions exceeded what a reasonable consumer would expect from a "clean diesel," and that its vehicle's emissions materially exceeded applicable emissions limits in real-world driving conditions.

25. Plaintiffs bring this action individually and on behalf of all other current and former owners or lessees of the Chevy Cruze. Plaintiffs seek damages and equitable relief for GM's misconduct related to the design, manufacture, marketing, sale, and lease of Cruze vehicles with unlawfully high emissions, as alleged in this Complaint.

## II. JURISDICTION

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

## III. VENUE

27. Venue is proper in this District under 28 U.S.C. § 1391 because Plaintiffs Jason Counts and Donald Klein purchased their cars in this District. Moreover, GM is headquartered in this District, and GM has marketed, advertised, sold, and leased the Cruze within this District.

## IV. PARTIES

### A. Michigan Plaintiffs

28. Plaintiff Jason Counts (for the purpose of this paragraph, "Plaintiff") is a citizen of Michigan, domiciled in Vassar, Michigan. On or about February 8, 2014, Plaintiff purchased a new 2014 Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle") from Sundae Chevrolet, Inc. in Grand Ledge, 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system to turn off during normal driving conditions. Had GM disclosed

this design, and the fact that the Cruze 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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's Clean Diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

29. Plaintiff Donald Klein (for the purpose of this paragraph, "Plaintiff") is a citizen of Michigan domiciled in Fenton, Michigan. On or about April 18, 2014, Plaintiff purchased a new 2014 Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle") from Vic Canever Chevrolet in Fenton, 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions

reduction system to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze 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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's clean diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

**B. California Plaintiffs**

30. Plaintiff Oscar Zamora (for the purpose of this paragraph, "Plaintiff") is a citizen of California domiciled in Los Angeles, California. In 2015, Plaintiff purchased a new 2014 Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle") from a dealership in Santa Barbara, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the

vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted pollutants such as NOx at many multiples of emissions emitted from gasoline-powered vehicles, at many times the level a reasonable consumer would expect from a "clean diesel," and at many multiples of that allowed by federal law. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze 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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's Clean Diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

### C. West Virginia Plaintiff

31. Plaintiff Derek Long (for the purpose of this paragraph, "Plaintiff") is a citizen of West Virginia domiciled in Buckhannon, West Virginia. In August 2015, Plaintiff purchased a new 2015 Chevrolet Cruze diesel (for the purpose of

this paragraph, the "Affected Vehicle",) from Mid-State Chevrolet, an authorized GM dealer in Sutton, West Virginia. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze 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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's Clean Diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's Clean Diesel engine system of the Affected Vehicles prior to purchase.

**D. Arizona Plaintiff**

32. Plaintiff Bassam Hirmiz (for the purpose of this paragraph, "Plaintiff") is a citizen of Arizona domiciled in Chandler, Arizona. In February 2014, Plaintiff purchased a new 2014 Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle",) from Freeway Chevrolet, an authorized GM dealer in Chandler, 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. Plaintiff also paid an additional registration fee to the Arizona Department of Transportation in order to register his vehicle because it was more expensive than a traditional gas-powered model. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze 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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's clean diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and

diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

**E. Florida Plaintiff**

33. Plaintiff Jason Silveus (for the purpose of this paragraph, "Plaintiff") is a citizen of Florida domiciled in Largo, Florida. On or about May 2014, Plaintiff purchased a new Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle") from Maher Chevrolet in St. Petersburg, 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze 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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's clean diesel engine

system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

**F. Maryland Plaintiff**

34. Plaintiff John Miskelly (for the purpose of this paragraph, "Plaintiff") is a citizen of Maryland domiciled in Baltimore, Maryland. On or about June 15, 2015, Plaintiff purchased a new 2014 Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle") from Jerry's Chevrolet & Mitsubishi in Parkville, 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper

emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze 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. Plaintiff and

each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's clean diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

**G. New York Plaintiff**

35. Plaintiff Thomas Hayduk (for the purpose of this paragraph, "Plaintiff") is a citizen of New York domiciled in Cicero, New York. On or about February 14, 2015, Plaintiff purchased a used 2014 Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle") from Sun Auto Warehouse in Cicero, New York. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze 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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's clean diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

36. Plaintiff Christopher Hemberger (for the purpose of this paragraph, "Plaintiff") is a citizen of Colorado domiciled in Pueblo West, Colorado. On or about March 18, 2015, Plaintiff purchased a used 2014 Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle") from Sun Chevy, an authorized GM dealership in Cicero, New York. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff, at the time the vehicle was purchased, it was equipped with an emissions system that turned off or limited its emissions reduction system during normal driving conditions and emitted 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze

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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions associated with the Chevrolet Cruze's clean diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

## H. Texas Plaintiff

37. Plaintiff Joshua Rodriguez (for the purpose of this paragraph, "Plaintiff") is a citizen of Texas domiciled in Granbury, Texas. On or about August 13, 2013, Plaintiff purchased a new 2014 Chevrolet Cruze diesel (for the purpose of this paragraph, the "Affected Vehicle") from a seller in Fort Worth, 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 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. GM's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the Cruze without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. GM 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 clean diesel system, as represented through advertisements and representations made by GM. 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 GM had designed part of the emissions reduction system

to turn off during normal driving conditions. Had GM disclosed this design, and the fact that the Cruze 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. Plaintiff and each Class member has suffered an ascertainable loss as a result of GM's omissions and/or misrepresentations associated with the Chevrolet Cruze's clean diesel engine system, including, but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, decreased performance of the vehicle, and diminished value of the vehicle. Neither GM nor any of its agents, dealers, or other representatives informed Plaintiff or Class members of the existence of the comparatively and unlawfully high emissions and/or defective nature of the Chevrolet Cruze's clean diesel engine system of the Affected Vehicles prior to purchase.

## I. Defendants

### 1. General Motors

38. Defendant General Motors LLC (GM) is a Delaware limited liability company with its principal place of business located at 300 Renaissance Center, Detroit, Michigan, and is a citizen of the States of Delaware and Michigan. The sole member and owner of General Motors LLC is General Motors Holdings LLC.

General Motors Holdings LLC is a Delaware limited liability company with its principal place of business in the State of Michigan.

39. GM, through its various entities, including Chevrolet, designs, manufactures, markets, distributes and sells GM automobiles in this District and multiple other locations in the United States and worldwide. GM and/or its agents designed, manufactured, and installed the GM engine systems in the Chevy Cruze. GM also developed and disseminated the owner's manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

**2. The Bosch Defendants**

40. 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 and Europe. These vehicles include the GM vehicles in this case and the Dodge Ram 1500 EcoDiesel and Jeep Grand Cherokee EcoDiesel, as well as numerous models made by Volkswagen, Audi, Porsche, and Mercedes.

41. The following is a list, excluding the GM vehicles in this case, of all diesel models in the United States with Bosch-supplied software whose emissions exceed federal and California emission standards and whose emissions are beyond

what a reasonable consumer would expect from cars marketed as "clean" or "low emission":

42. The Bosch entities participated not just in the development of the defeat device, but also 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 GmbH and Bosch LLC 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 its software could be operated as a defeat device 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, Audi, Mercedes, GM, and others to defraud U.S. consumers, regulators, and diesel car purchasers or lessees. Bosch GmbH and Bosch LLC have enabled over 1.3 million vehicles to be on the road in the United States polluting at levels that exceed emissions standards and which use software that manipulate emissions controls in a manner not expected by a reasonable consumer.

43. 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 GM 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. Employees of

Bosch GmbH and Bosch LLC have collaborated in the emissions scheme with GM in this judicial district and have been present in this district.

44. Robert Bosch LLC is a Delaware limited liability company with its principal place of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan. 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 GM for use in the Affected Vehicles.

45. Both Bosch GmbH and Bosch LLC (collectively, "Bosch") 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, manufacturers and applies 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 individuals involved in the RICO enterprise and conspiracy at both Bosch GmbH and Bosch LLC. Some individuals worked at both Bosch LLC and Bosch GmbH during the course of the RICO conspiracy. The acts

of individuals described in this Complaint have been associated with Bosch GmbH and Bosch LLC whenever possible. Regardless of whether an individual works for Bosch LLC in the U.S. or Bosch GmbH in Germany, the individuals often hold themselves 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.[7] Bosch documents and press releases often refer to the source of the document as "Bosch" without identifying any particular Bosch entity. Thus, the identity of which Bosch defendant was the author of such documents and press releases cannot be ascertained with certainty until Bosch GmbH and Bosch LLC respond to discovery requests in this matter.

46. Bosch holds itself out to the world as one entity: "the Bosch Group." The Diesel Systems division, which developed the EDC17, is described as part of the Bosch Group. In the case of the Mobility Solutions sector, which oversees the Diesel Systems Group, the Bosch Group competes with other large automotive suppliers.[8]

47. The Bosch publication *Bosch in North America* represents that "Bosch supplies . . . clean-diesel fuel technology for cars and trucks." Throughout the

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[7] Exhibit 3, Bosch 2014 Annual Report, available at http://www.bosch.com/en/com/bosch_group/bosch_figures/publications/archive/archive-cg12.php.

[8] *See, e.g.*, Exhibit 4, Bosch 2016 Annual Report, available at https://assets.bosch.com/media/global/bosch_group/our_figures/pdf/bosch-annual-report-2016.pdf, at 23.

document describing its North American operations, the company refers to itself as "Bosch" or "the Bosch Group."[9]

48. The *Bosch in North America* document proclaims that Automotive Technology is "Bosch's largest business sector in North America." In this publication, Bosch never describes the actions of any separate Bosch legal entity, like Bosch LLC, when describing its business, but always holds itself out as "the Bosch Group."[10]

49. German authorities are now investigating Bosch GmbH and are focusing on certain Bosch employees:[11]

> **Three Bosch Managers Targeted as German Diesel Probe Expands**
>
> A German probe into whether Robert Bosch GmbH helped Volkswagen AG cheat on emissions tests intensified as Stuttgart prosecutors said they were focusing on three managers at the car-parts maker.
>
> While Stuttgart prosecutors didn't identify the employees, the step indicates that investigators may have found specific evidence in the probe. Previously, prosecutors have said they were looking into the role "unidentified" Bosch employees may have played in providing software that was used to cheat on emission tests.

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[9] Exhibit 5, *Bosch in North America* (May 2007), available at http://www.bosch.us/content/language1/downloads/BINA07.pdf, at 2.

[10] *Id.* at 5.

[11] Exhibit 6, *Three Bosch Managers Targeted as German Diesel Probe Expands*, Bloomberg (June 29, 2017), https://www.bloomberg.com/news/articles/2017-06-29/three-bosch-managers-targeted-as-german-diesel-probe-expands.

> "We have opened a probe against all three on suspicions they aided fraud in connection to possible manipulation in emissions treatments in VW cars," Jan Holzner, a spokesman for the agency, said in an emailed statement. "All of them are mangers with the highest in middle management."
>
> Bosch, which is also being investigated by the U.S. Department of Justice, has been caught up in the VW diesel scandal that emerged in 2015 over allegations its employees may have helped rig software that helped the carmaker to cheat emission tests. Earlier this year, Stuttgart prosecutors opened a similar probe into Bosch's role in connection with emission tests of Daimler cars.
>
> A spokesman for Bosch said that while he can't comment on individual employees, the company "takes the overall allegations in diesel cases seriously and has been cooperating fully from the beginning of the probes."
>
> The Stuttgart probe is running parallel to the central criminal investigation in Braunschweig, closer to VW's headquarters. That investigation is targeting nearly 40 people on fraud allegations related to diesel-emission software, including former VW Chief Executive Officer Martin Winterkorn.
>
> Prosecutors' interest extends to multiple units in the VW family -- including luxury brands Audi and Porsche. In addition, Stuttgart prosecutors are also reviewing a third case related to Bosch's cooperation with Fiat Chrysler Automobiles NV on software for diesel engines.

50. As reported by Bloomberg on September 16, 2016, U.S. prosecutors are examining Bosch's role in supplying its EDC17 to manufacturers other than Volkswagen:

> U.S. prosecutors are investigating whether Germany's Robert Bosch GmbH, which provided software to Volkswagen AG, conspired with the automaker to engineer diesel cars that would cheat U.S. emissions testing, according to two people familiar with the matter.
>
> Among the questions the Justice Department is asking in the criminal probe, one of them said, is whether

> automakers in addition to VW used Bosch software to skirt environmental standards. Bosch, which is also under US. Civil probe and German inquiry, is cooperating in investigations and can't comment on them, said spokesman Rene Ziegler.
>
> The line of inquiry broadens what is already the costliest scandal in US. automaking history. Wolfsburg-based VW faces an industry-record $16.5 billion, and counting, in criminal and civil litigation fines after admitting last year that its diesel cars were outfitted with a "defeat device" that lowered emissions to legal levels only when it detected the vehicle was being tested.
>
> More than a half dozen big manufacturers sell diesel-powered vehicles in the U.S. The people familiar with the matter declined to say whether specific makers are under scrutiny.

51. Recently, researchers from Rohr-Universität in Bochum, Germany, and University of California-San Diego uncovered Bosch's role in connection with the manipulation of emission controls in certain Volkswagen and FCA vehicles. The researchers found no evidence that Volkswagen and FCA wrote the code that allowed the operation of defeat devices. All the code they analyzed was found in documents copyrighted by Robert Bosch GmbH. These researchers found that in the "function sheets" copyrighted by Robert Bosch GmbH, the code to cheat the emissions test was labeled as modifying the "acoustic condition" of the engine, a label that helped the cheat fly under the radar. Given that GM cars have a Bosch EDC17 as did the cheating Volkswagen and FCA cars, and given testing by Plaintiffs' experts described below that reveals defeat devices in GM cars, it is

plausible to allege that Bosch was a participant in the scheme to hide the true emissions of Chevy Cruze diesels, and supplied similar software to GM to enable a similar emission deception.

## V. FACTUAL ALLEGATIONS

### A. The environmental challenges posed by diesel engines and the United States regulatory response thereto.

52. The U.S. government, through the Environmental Protection Agency (EPA), has passed and enforced laws designed to protect U.S. 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.

53. 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.

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

55. 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.

56. 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).

57. 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.

58. 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.

59. 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.

60. Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains longer hydrocarbon chains, which tend to produce a more efficient vehicle. In fact, diesel engines can convert over 45% of diesel's chemical energy into useful mechanical energy, whereas gasoline engines convert only 30% of gasoline's chemical energy into mechanical energy.[12] Though more efficient, diesel engines come with their own set of challenges, as emissions from diesel

[12] Exhibit 7, Jack Ewing, *Volkswagen Engine-Rigging Scheme Said to Have Begun in 2008*, N.Y. Times (Oct. 4, 2015), http://www.nytimes.com/2015/10/05/business/ engine-shortfall-pushed-volkswagen-to-evade-emissions-testing.html.

engines can include higher levels of NOx and particulate matter or soot than emissions from gasoline engines due to the different ways the different fuels combust and the different ways the resulting emissions are treated following combustion. One way NOx emissions can be reduced is by adjusting the compression and temperature, but that in turn produces particulate matter, a similarly undesirable hydrocarbon-based emission. Another way NOx emissions can be reduced is through exhaust gas recirculation (EGR), whereby exhaust gases are routed back into the intake of the engine and mixed with fresh incoming air. Exhaust gas recirculation lowers NOx by reducing the available oxygen and by reducing maximum combustion temperatures; however, EGR can also lead to an increase in particulate matter as well. Another way NOx emissions can be reduced is through expensive exhaust gas after-treatment devices, primarily catalytic converters, that use a series of chemical reactions to transform the chemical composition of a vehicle's NOx emissions into less harmful, relatively inert, and triple bonded nitrogen gas (N2) and carbon dioxide (CO2).

61. Diesel engines thus operate according to this trade-off between price, NOx, and particulate matter, and for the EPA to designate a diesel car as a "clean" vehicle, it must produce both low particulate matter and low NOx. In 2000, the EPA announced stricter emission standards requiring all diesel models starting in 2007 to produce drastically less NOx than years prior. But it was of utmost

importance for GM to achieve (or at least appear to achieve) this "impossible" goal, for it could not legally sell a single vehicle that failed to comply with the governmental emission regulations. Before introducing an Affected Vehicle into the U.S. stream of commerce (or causing the same), GM was required to first apply for, and obtain, an EPA-administered Certificate of Conformity (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 Clean Air Act expressly prohibits automakers, like GM, 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 Executive Order (EO), confirming compliance with California's emission regulations, before allowing the vehicle onto California's roads.

**B. Emission test cycles and emission standards.**

**1. U.S. NOx emissions standards**

62. The purpose of the Clean Air Act and its implementing regulations is to protect human health and the environment by, among other things, reducing

emissions of pollutants from new motor vehicles, including nitrogen oxides ("NOx"),

63. The Clean Air Act requires the U.S. Environmental Protection Agency ("EPA") to promulgate emissions standards for new motor vehicles. The EPA established standards and test procedures for light-duty motor vehicles sold in the United States, including emission standards for NOx.

64. The Clean Air Act prohibits manufacturers of new motor vehicles from selling, offering for sale, introducing or delivering for introduction into U.S. commerce, or importing (or causing the foregoing with respect to) any new motor vehicle unless the vehicle complies with U.S. emissions standards, including NOx emissions standards, and is issued an EPA COC.

65. To obtain a COC, a manufacturer is required to submit an application to the EPA for each model year and for each test group of vehicles that it intends to sell in the United States. The application is required to be in writing, to be signed by an authorized representative of the manufacturer, and to include, among other things, the results of testing done pursuant to the published Federal Test Procedures that measure NOx emissions, and a description of the engine, emissions control system, and fuel system components, including a detailed description of each Auxiliary Emission Control Device (AECD) to be installed on the vehicle.

66. The EPA will not certify motor vehicles equipped with defeat devices. Manufacturers cannot sell motor vehicles in the United States without a COC from the EPA.

67. The California Air Resources Board (CARB) (together with the EPA, "U.S. regulators") issues its own certificates, called Executive Orders, for the sale of motor vehicles in the State of California. To obtain such a EO, the manufacturer is required to satisfy the standards set forth by the State of California, which are equal to or more stringent than those of the EPA.

68. As part of the application for a certification process, manufacturers often work in parallel with the EPA and CARB. To obtain a COC from the EPA, manufacturers are required to demonstrate that the light-duty vehicles are equipped with an on-board diagnostic (OBD) system capable of monitoring all emissions-related systems or components.

69. Manufacturers can demonstrate compliance with California OBD standards in order to meet federal requirements. CARB reviews applications from manufacturers, including GM, to determine whether their OBD systems are in compliance with California OBD standards, and CARB's conclusion can be included in the application the manufacturer submitted to the EPA.

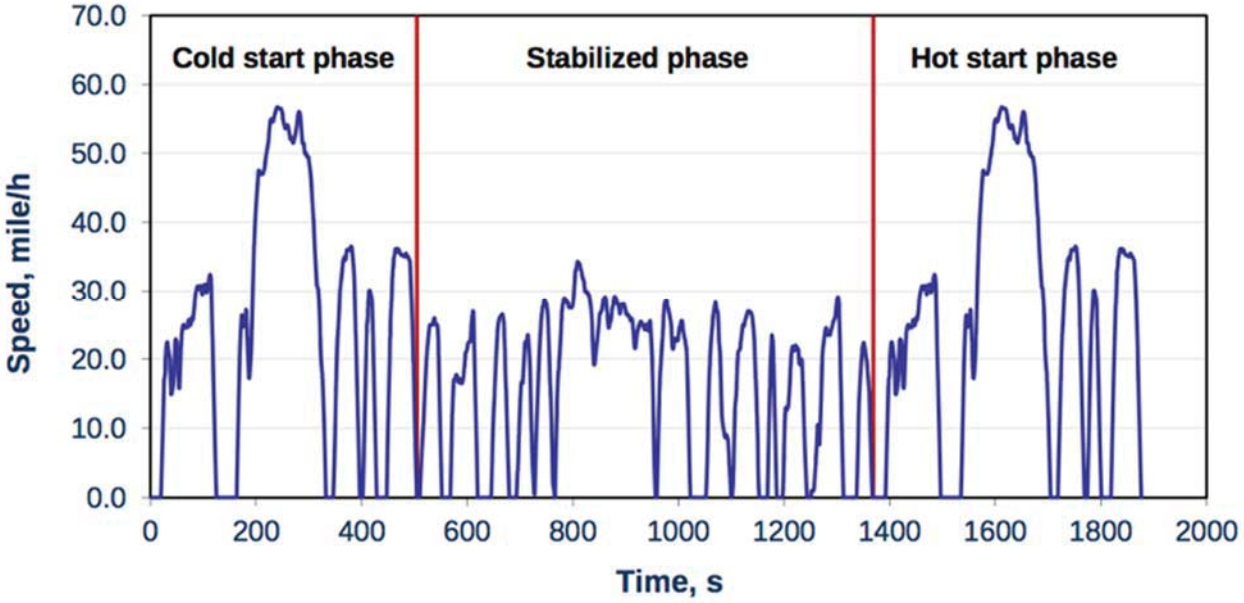
70. In 1998, the United States established new federal emissions standards that would be implemented in separate steps, or Tiers. Tier II emissions standards,

including for NOx emissions, were significantly stricter than Tier I. For light-duty vehicles, the regulations required manufacturers to begin to phase in compliance with the new, stricter Tier II NOx emissions standards in 2004 and required manufacturers to fully comply with the stricter standards for model year 2007. These strict U.S. NOx emissions standards were applicable specifically to vehicles in the United States.

**2. Test cycles.**

71. An emissions test cycle defines a protocol that enables repeatable and comparable measurements of exhaust emissions to evaluate compliance. The protocol specifies all conditions under which the engine is tested, including lab temperature and vehicle conditions. Most importantly, the test cycle defines the vehicle speed over time that is used to simulate a typical driving scenario. An example of a driving cycle is shown in Figure A. This graph represents the FTP-75 (Federal Test Procedure) cycle that has been created by the EPA and is used for emission certification and fuel economy testing of passenger vehicles in the United States. The cycle simulates an urban route with frequent stops, combined with both a cold- and a hot-start transient phase. The cycle lasts 1,877 seconds (about 31 minutes) and covers a distance of 11.04 miles (17.77 km) at an average speed of 21.2 mph (34.12 km/h).

**Figure A**




72. To assess conformance, these tests are carried out on a chassis dynamometer, a fixture that holds a car in place while allowing its driven wheels to turn with varying resistance meant to simulate the actual load on the engine during on-road driving. Emissions are measured during the test and compared to an emissions standard that defines the maximum pollutant levels that can be released during such a test. In the United States, emissions standards are managed on a national level by the EPA. In addition, California has its own emissions standards that are defined and enforced by CARB. California standards are also adopted by a number of other states ("Section 177" states).[13] Together with California, these

[13] Those states are: Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Delaware, Georgia, and North Carolina.

states cover a significant fraction of the U.S. market, making them a de facto second national standard.

73. The FTP-75 is the primary dynamometer cycle used to certify light- and medium-duty passenger cars/trucks. This cycle is primarily a dynamic cycle, with rapid changes in speed and acceleration meant to reflect city driving along with some steadier higher speed sections meant to account for some highway driving.

74. One critically important thing to understand about the FTP-75 is that it's a "cold start" cycle. That means the vehicle starts the cycle with the engine having been off for at least eight hours and in a completely cold state. The "cold start" portion of the test is challenging for diesel engines like the GM engine employing SCR because catalysts meant to control emissions are not yet at temperatures where they work (i.e., above their "light-off" temperature). The FTP-75 also includes a "hot start" phase, which has similar issues resulting from cool down of catalysts before this phase begins.

## C. "Dieselgate"

75. On September 18, 2015, the EPA issued a Notice of Violation of the Clean Air Act to German automaker Volkswagen Group after it was found that Volkswagen had intentionally programmed turbocharged direct injection (TDI) diesel engines to activate certain emissions controls only during laboratory

emissions testing. The programming caused the vehicles' nitrogen oxide (NOx) output to meet U.S. standards during regulatory testing but emit up to 40 times more NOx in real-world driving. Volkswagen put this programming in about 11 million cars worldwide, and in 500,000 in the United States, during model years 2009 through 2015.

76. The findings stemmed from a study on emissions discrepancies between European and U.S. models of vehicles commissioned in 2014 by the International Council on Clean Transportation (ICCT), summing up the data from three different sources on 15 vehicles. Among the research groups was a group of five scientists at West Virginia University, who detected additional emissions during live road tests on two out of three diesel cars. ICCT also purchased data from two other sources. The new road testing data and the purchased data were generated using Portable Emissions Measurement Systems (PEMS) invented by an EPA engineer in 1995. The findings were provided to the CARB in May 2014.

77. Several agencies and NGOs have been investigating other diesel manufacturers and have found, as outlined below, that most vehicles are not meeting the even less stringent European emission standards. The EPA investigation has expanded beyond Volkswagen and includes 28 diesel-powered vehicles made by BMW, Chrysler, GM, Land Rover, and Mercedes-Benz.

**D. GM's diesel technology**

78. GM designed the 2014-2015 diesel Cruze specifically to compete with the Volkswagen Jetta. To compete, GM understood that it needed to achieve similar fuel mileage and performance as the Jetta TDI.

79. GM engineers knew as early as 2009 that the Jetta TDI could not meet emissions standards. As Bob Lutz explains in a February 2016 Forbes article, "Our people told me that they had studied the Volkswagen products and that they could not get the hardware to perform the same way to satisfy California's emissions standards."[14]

80. Despite these findings, GM did develop a diesel engine that the automaker installed in the Chevy Cruze sedan "just to prove we could," said Lutz.[15]

81. On information and belief, GM could not have matched the Jetta TDI—which was turning off emissions after-treatment controls—on fuel economy or performance metrics without cheating emissions.

82. [redacted]

[14] Exhibit 1, https://www.forbes.com/sites/davidkiley5/2016/02/16/bob-lutz-gm-knew-vws-vehicles-couldnt-pass-california-emissions-tests/#1452774b1c56.

[15] *Id.*

[redacted]

[redacted] [16]

[redacted]

83. [redacted]

[redacted]

## E. GM's diesel market research

84. [redacted]

[redacted].[17] [redacted]

[redacted]

[16] GMCOUNTS000050819.

[17] GMCOUNTS000023792 at 23793.

[redacted][18]

### 1. Materiality of advanced emissions after-treatment technology

85. [redacted].[19] [redacted]"[20] [redacted].[21]

86. [redacted].[22] [redacted][23]

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[18] *Id.*

[19] GMCOUNTS000027132 at 27135.

[20] *Id.* at 27138.

[21] *Id.* at 27139.

[22] *Id.*

[23] GMCOUNTS000025561.

87. [redacted] .”[24]

**2. Materiality of fuel economy**

88. [redacted] [25]

89. [redacted] [26]

90. [redacted]

[24] GMCOUNTS000023792.

[25] *Id*.

[26] *Id*.

[redacted][27]

91. [redacted][28]

92. [redacted][29]

93. In order to successfully grow the U.S. diesel market and meet its ambitious objectives, it was critical that GM develop the technology to maintain the efficient, powerful performance of a diesel, while drastically reducing NOx emissions.

94. 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.

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[27] GMCOUNTS000184509.

[28] *Id.*

[29] GMCOUNTS000076713.

95. GM's response to the challenge has been the GM "Cruze Clean Turbo Diesel" engine and the Cruze.

**F. GM advertised and promoted the Chevrolet Cruze as a "clean diesel" because it understood "clean" was material to the targeted consumer.**

96. GM touted the Cruze as "GM's cleanest diesel engine ever," and [redacted]

97. To induce consumers to purchase a Cruze vehicle, GM marketed the Cruze as environmentally friendly and fuel efficient.

98. GM advertising is widely disseminated throughout the United States. It includes, among other things, televised advertisements, online social media campaigns, press releases and public statements, print advertising, brochures and other materials distributed to dealers and distributors, and strategic product placement.

**1. GM influenced press coverage of the Cruze in order to promote it as clean, technologically advanced, and environmentally friendly.**

99. As early as [redacted][30] [redacted]

[30] GMCOUNTS000022847.

[redacted][31]

100. [redacted]," messages about the Cruze Diesel included the following claims:[32]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

101. [redacted][33] [redacted]

[31] *Id.*

[32] GMCOUNTS000161714.

[33] GMCOUNTS000052418.

[34]

102. ."[35]

103. "[36]

[34] *Id*. at 52436.

[35] *Id.* at 52438.

[36] *Id.* at 52440.

[redacted] [7]

104. [redacted] [38]

105. [redacted] [40] [redacted] [41]

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[37] GMCOUNTS000052418 at 52441.

[38] GMCOUNTS000063698 at 63701.

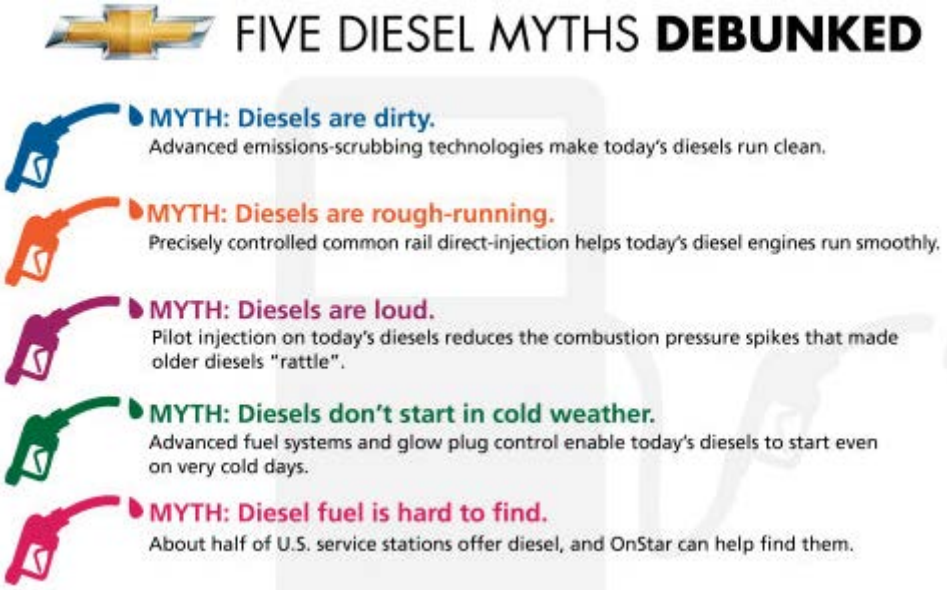
[39] GMCOUNTS000065484.

[40] *Id.* (emphasis added).

[41] *Id.*

**2. GM advertised the Cruze as clean, technologically advanced, and environmentally friendly because it knew these themes were material to consumers.**

106. GM's "myth-busting" attempts were not limited to influencing press coverage. It also used paid advertisements to change consumer perceptions about diesel: [42]




107. Another example is an advertisement promising that GM's advanced technology "improves performance while decreasing emissions"[43]

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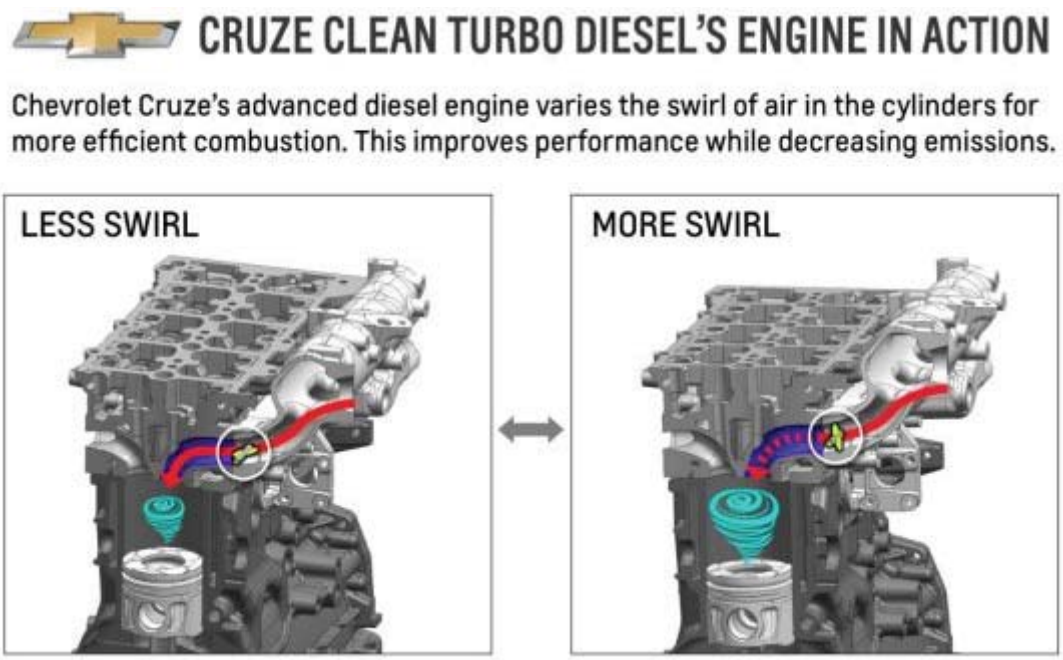
[42] Exhibit 8, http://www.torquenews.com/sites/default/files/image-119/%5Btitle-raw%5D/dieselmyths_v2.jpg.

[43] Exhibit 9, http://media.chevrolet.com/content/Pages/news/us/en/2013/Jul/0731-cd-variable-swirl/_jcr_content/rightpar/imagewithmodal/image.resize.maxw_570.jpg/1375220652110.jpg.




108. [redacted] [4]

109. [redacted] ."[45]

[44] GMCOUNTS000052667.

[45] *Id*.

[redacted]

**3. GM advertised and promoted the Chevrolet Cruze as exceeding U.S. emissions standards in all 50 states.**

110. GM expressly markets the Affected Vehicles as "clean diesel" vehicles that exceed emissions standards. These advertisements create a reasonable expectation that the "advanced diesel engine" would materially reduce emissions beyond what was required by the U.S. EPA and state regulators. For example:

**CLEAN DIESEL TECHNOLOGY** The turbocharged engine in Cruze Clean Turbo Diesel generates at least 90% less nitrogen oxide and particulate emissions when compared to previous-generation diesels. In fact, because of technologies like exhaust gas recirculation, selective catalyst reduction, particulate filter and advanced fuel systems, Cruze Diesel emissions are below strict U.S. environmental standards.

**4. GM advertised and promoted itself as a manufacturer of technologically advanced vehicles.**

111. A December 2013 New GM testimonial advertisement stated that "GM has been able to deliver a quality product that satisfies my need for dignity and safety."

112. GM proclaims on its website, that it is "driven to maintain the highest quality standards" and that "Quality and safety are part of our very foundation:"[46]

[46] Exhibit 10, http://www.gm.com/company/about-gm.html.

OUR **COMMITMENT**

## SAFETY & QUALITY

We assign the highest priority to matters that impact our customers' well-being and quality of life. As a result, General Motors is driven to maintain the highest quality standards. Quality and safety are part of our very foundation. Safety is something we will never compromise.

113. On the same website in 2013, New GM stated: "At GM, it's about getting everything right for our customers – from the way we design, engineer and manufacture our vehicles, all the way through the ownership experience."[47]

**Quality Inside and Out**

Developing high-quality cars, crossovers and trucks begins with the customer in mind.

At GM, it's about getting everything right for our customers – from the way we design, engineer and manufacture our vehicles, all the way through the ownership experience.

**5. GM advertised and promoted itself as a company that cares about the environment.**

114. GM claims that it is "committed to addressing the global challenge of climate change head on." Touting its "ongoing commitment to climate action", its "support for a strong Paris climate negotiations outcome," and its "hope that other companies will join the growing business community committed to addressing this

[47] Exhibit 11, https://www.gm.com/vision/quality_safety/it_begins_with_a_commitment_to_Quality.

important global issue," GM calls itself a "proud U.S. business for climate action":[48]

115. [redacted][49] [redacted][0]

[redacted]

[48] Exhibit 12, http://www.gm.com/mol/dec-14-joining-the-pledge.html.

[49] GMCOUNTS000025561 at 25565.

[50] GMCOUNTS000112341 at 112343.

[51] *Id*. at GMCOUNTS000112344.

## G. The GM and Bosch deception

### 1. GM's advertising and press strategy was effective.

116. GM's marketing and press efforts were well received. [redacted]

[redacted][2]

117. [redacted]"[53]

118. [redacted]

[52] GMCOUNTS000073601.

[53] GMCOUNTS000075688.

119. [redacted] [54]

120. [redacted] [55]

121. [redacted].”[56]

**2. GM’s diesel Cruze contains defeat devices enabled by Bosch and hidden from regulators and consumers.**

122. Plaintiffs have tested the Cruze using a Portable Emissions Measurement System (“PEMS”). Testing revealed that the Cruze emissions well exceed U.S. emissions standards. The U.S. standard is 70 mg/mile. In highway driving, the Cruze averaged 128 mg/mile with a high of 557 mg/mile. At speeds over 70 mph, the average was 231 mg/mile. That’s 1.8 to 8 times the federal standard.

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[54] GMCOUNTS000118618.

[55] GMCOUNTS000076707.

[56] GMCOUNTS000083656.

123. In stop-and-go driving, the average was 182 mg/mile with a maximum of 689 mg/mile, or 3.6 to 13.8 times the federal standard.

124. When tested at temperatures below 50ºF, the NOx was 689 mg/mile and it appears the emissions control system stops working.

125. When tested at temperatures over 85ºF, NOx rates were 450 to 550 mg/mile.

126. On information and belief, had GM disclosed this information to regulators, Certificates of Conformity would not have been granted.

127. [redacted] [57]

[redacted]

[57] GMCOUNTS000054047.

128. [redacted] [58]

[redacted]

129. [redacted]

[redacted] [9] [redacted]

[redacted]

[redacted]

[redacted] [60]

[58] GMCOUNTS000054048.

[59] GMCOUNTS000089112.

[60] GMCOUNTS000042683.

130. Shutting off EGR and limiting SCR dosing in the Cruze vehicles under certain conditions led to an increase in emissions during real-world driving conditions that exceed the reasonable expectations of an ordinary consumer.

**a. Cheating in GM's European fleet**

131. 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"),[61] scientific literature and reports and testing indicate that GM's so called clean diesel vehicles emit far more pollution on the road than in lab tests. Indeed, reports by scientists and governmental agencies indicate that virtually all diesel cars are failing to meet European emissions standards which are lower than U.S. standards. On information and belief, and based on testing, it is not plausible that manufacturers such as GM would fail to meet European standards but be able to meet U.S. standards.

[61] Exhibit 13, EPA's Notice of Violation ("NOV") to Volkswagen Group of America, Inc., http://www3.epa.gov/otaq/cert/documents/vw-nov-caa-09-18-15.pdf. As detailed in the EPA's Notice of Violation, 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.

132. A study conducted by TNO for the Dutch Ministry of Infrastructure and the Environment confirms that, in real world testing, the GM Opel 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.

133. The TNO test found that in real-world driving conditions, all of the vehicles tested failed to meet the European emissions requirements, and on average these vehicles were at eight times the limit. Included in the tested vehicles was GM's Opel Zafira 1.6-Liter engine. [redacted].[62]

134. More specifically, the May 2015 TNO Report found that the Opel's tailpipe NOx emissions ranged from 150 to 600 mg/km for steady highway driving and 200 to 700 mg/km for urban and mixed driving; for reference, the Euro 6 max, which is less stringent than U.S. standards, is 80 mg/km. NOx emissions as measured on a chassis dynamometer according to the certification procedure were 53 and 65 mg/km, well below the standard. 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.

[62] GMCOUNTS000063698.

135. The following graph depicts the Opel's passing the laboratory test (blue bar) and failing all real-world tests:

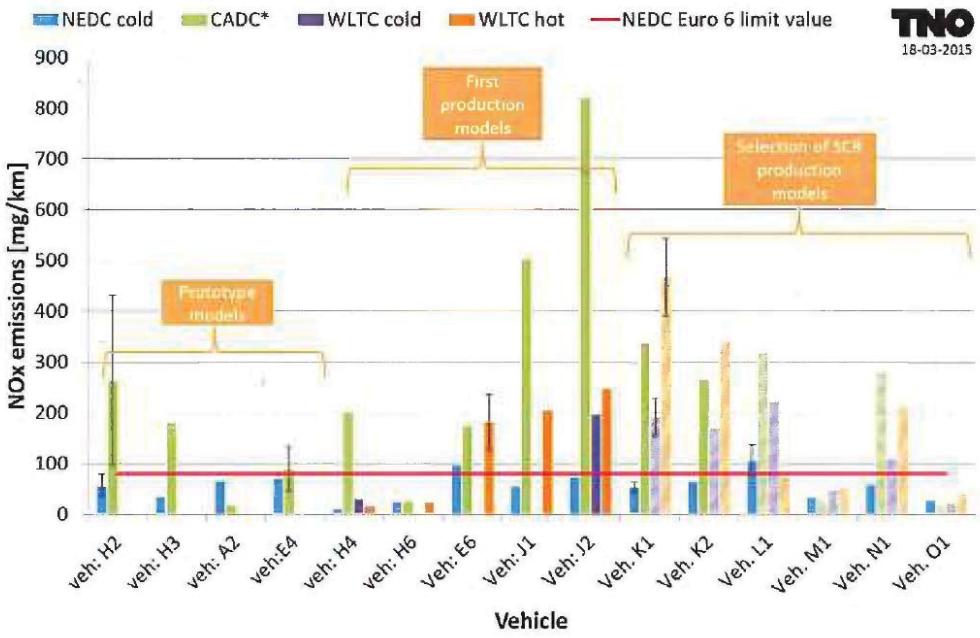



Figure 9: $NO_x$ emissions per driving cycle.
*CADC with hot start, for veh: H2 to E6 motorway part 130 km/h was used, for veh: J1 to O1 motorway part 150 km/h was used.
**The bars in the figure that are shaded are tests with WLTP road load instead of NEDC road load.

Vehicles K1 and K2 are Opels.

136. The fact that GM's Opel passed the dynamometer test in all tests, but failed the real world test, suggests that, like Volkswagen, GM is implementing a "defeat device." As discussed below, Plaintiffs' dynamometer testing indicates that GM employs a defeat device in its diesels.

137. 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 GM's 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."

138. An additional study by the British Department for Transport from April 2016 employed real world driving studies with portable emissions analyzers to test on road emissions. The study found high emissions in both the Vauxhall Insignia and Vauxhall Mokka (Vauxhall is the name used by Opel in the United Kingdom). Real world emissions of these vehicles were found to be approximately 750 mg/km and 400 mg/km for the Insignia and Mokka, respectively. These emissions are well above the Euro 6 standard of 80 mg/km.

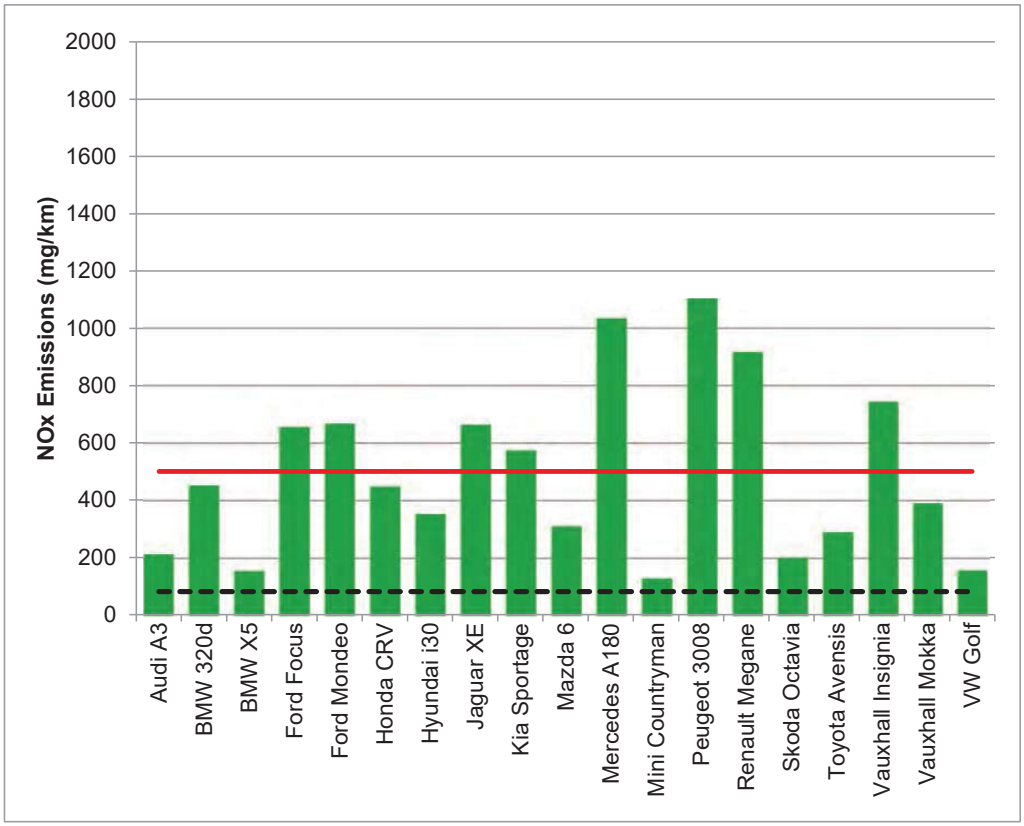


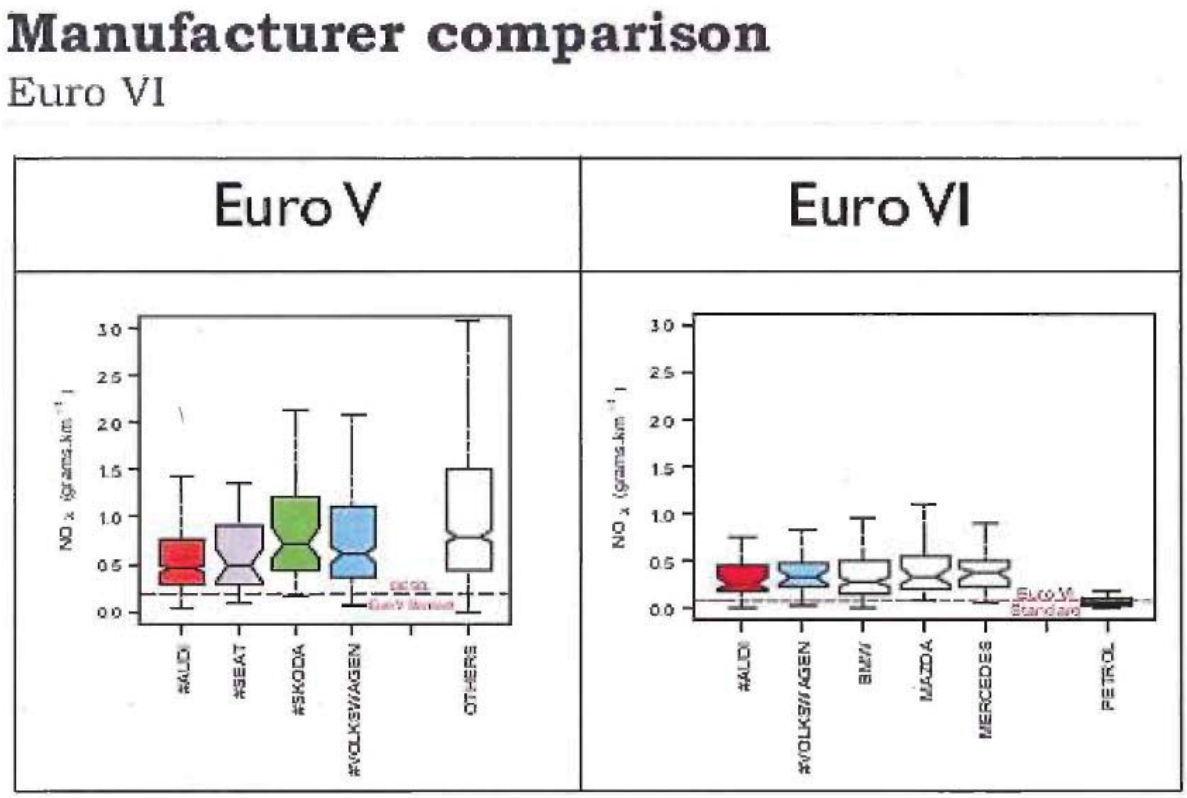

**Figure 5-6 Real driving NOx emissions - Euro 6 vehicles (note: direct comparisons should not be made between vehicles as test conditions varied).**

139. A study by the French Ministry of the Environment found similarly high on-road emissions and concluded that further investigation was required for several manufacturers, including Opel.

140. 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

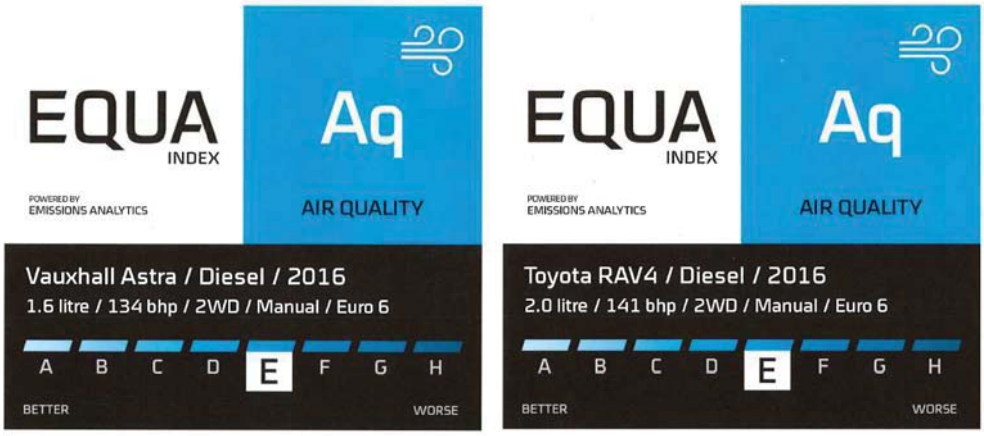
almost one-third above that suggested by official figures. For car buyers, this means that fuel economy on average is one quarter worse than advertised. This matters, even if no illegal activity is found."

141. Testing by the Institute for Transport Studies in the UK in 2015 also confirmed that vehicles made by all manufacturers, including GM, exceeded the more lax European NOx standards:




142. Emissions Analytics, a UK based testing company, developed an Air Quality Index that rates the NOx compliance of vehicles. An "A" is a passing grade. Among the vehicles tested were Vauxhall models. Vauxhall is a subsidiary

of GM and its Corsa and Astra models are similar to the Chevy Cruze. Both models failed to meet the laxer European NOx standard.




143. Recent testing by the German Federal Department of Motor Vehicles has revealed that certain GM 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 GM vehicles.

## H. The Bosch EDC17

144. All modern engines are integrated with sophisticated computer components to manage the vehicle's operation, such as an electronic diesel control. Bosch GmbH tested, manufactured, and sold the EDC system used by Volkswagen, FCA, Mercedes, and GM. This system is more formally referred to as

the Electronic Diesel Control Unit 17 ("EDC Unit 17" or "ED17"). Upon its introduction, EDC Unit 17 was publicly touted by Bosch as follows:[63]

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

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

146. Bosch's EDC Unit 17 controls emissions by periodically reading sensor values, evaluating a control function, and controlling actuators based on the control signal.[64] Sensor readings include crankshaft position, air pressure, air

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[63] *See* Exhibit 14, 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.

[64] Exhibit 15, Moritz Contag *et al.*, How They Did It: An Analysis of Emission Defeat Devices in Modern Automobiles, p.4 (2017).

temperature, air mass, fuel temperature, oil temperature, coolant temperature, vehicle speed, exhaust oxygen content, as well as driver inputs such as accelerator pedal position, brake pedal position, cruise control setting, and selected gear. Based on sensor input, EDC17 controls and influences the fuel combustion process including, in particular, fuel injection timing, which affects engine power, fuel consumption, and the composition of the exhaust gas.[65]

147. 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 GM, from making significant changes on their own. Accordingly, both the design and implementation are interactive processes, requiring Bosch's close collaboration with the automaker from beginning to end.

148. With respect to the Affected Vehicles, the EDC17 was used surreptitiously to evade emissions regulations. Bosch and GM worked together to develop and implement a specific set of software algorithms for implementation in the Affected Vehicles, including algorithms to adjust fuel levels, exhaust gas recirculation, air pressure levels, and urea injection rates in vehicles equipped with SCR systems.

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[65] *Id.*

149. [redacted]

- [redacted]
- [redacted]
- [redacted][67]

150. [redacted][8]

[66] GMCOUNTS000002825.

[67] *Id.*

[68] GMCOUNTS000130465.

151. [redacted] [69]

152. [redacted]

[69] GMCOUNTS000138667.

[redacted] [70]

153. [redacted] [71]

- [redacted]
- [redacted]
- [redacted]
- [redacted]!

154. [redacted] ”[72] [redacted]

[70] GMCOUNTS000026636.

[71] GMCOUNTS000027716.

[72] GMCOUNTS000027650.

155. [redacted].[73]

156. [redacted][74] [redacted].

157. [redacted].[75] [redacted].[76] [redacted]

[73] GMCOUNTS000023673.

[74] GMCOUNTS000023551.

[75] GMCOUNTS000042683.

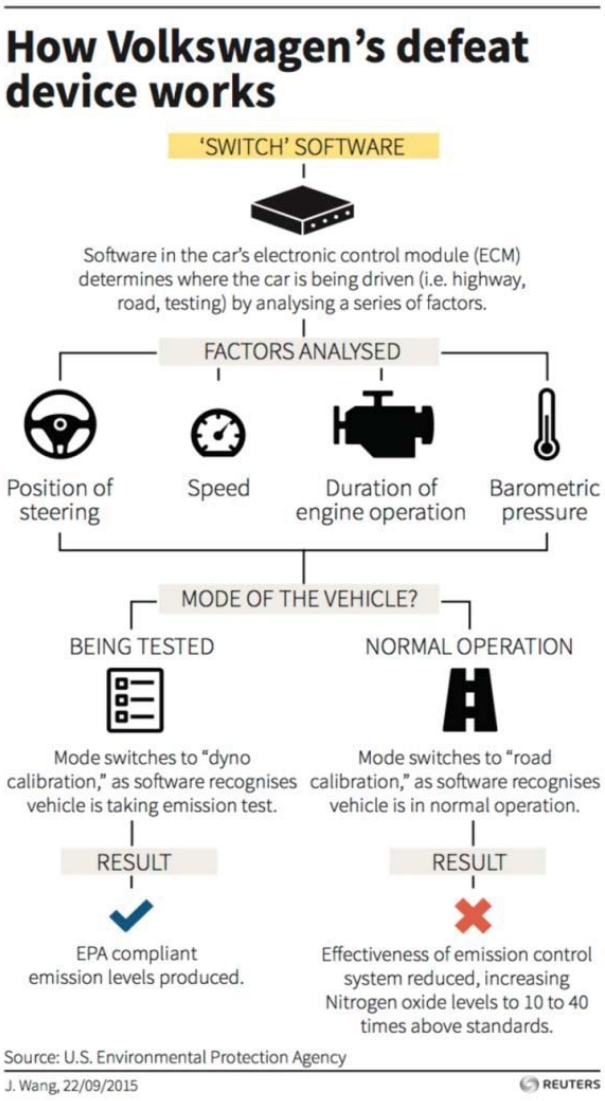
[76] *Id.*

[redacted]

158. Thus, Bosch and GM worked together to develop and implement a specific set of software algorithms for implementation in the Affected Vehicles, which enabled GM to adjust fuel levels, exhaust gas recirculation, air pressure levels, and even urea injection rates (for applicable vehicles).[77] 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, GM, 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

[77] *See, e.g.*, Exhibit 16, *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 May 24, 2017).

engine to return to full power while reducing the emissions control systems' performance, and consequently caused the vehicle to spew the full amount of illegal NOx emissions out on the road.[78] This process is illustrated in the following diagram, applicable to GM as well:




[78] Exhibit 17, Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015), http://www.bbc.com/news/business-34324772.

159. This workaround was 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 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 COC, automakers must submit an application that 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.

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

161. 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. GM and Bosch hid these facts from the EPA, CARB and 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.

162. GM's illegal workaround was enabled by its close partnership with Bosch, which enjoyed a sizable portion of its annual revenue from manufacturing parts used in GM's and other manufacturers' diesel vehicles.[79] Bosch was well aware that GM was using its emissions control components as a defeat device and, in fact, worked with GM to develop the software algorithm specifically tailored for the Affected Vehicles.

163. Because the COCs were fraudulently obtained, the Affected Vehicles were never covered by valid COCs and thus were never offered legally for sale. GM hid these facts from the EPA, CARB and other state regulators, and

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[79] 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* Exhibit 18, *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.

consumers, and it continued to sell and lease the Affected Vehicles despite their illegality and with the complicity of Bosch.

## I. Bosch played a critical role in the defeat device scheme in many diesel vehicles in the U.S., giving rise to a strong inference that Bosch played a key role in implementing the GM emission strategy.

164. 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 GM were participants. On information and belief, Plaintiffs allege that the same level of coordination between Bosch and Volkswagen also occurred between Bosch and GM.

### 1. Volkswagen and Bosch conspired to develop the illegal defeat device.

165. Bosch tightly controlled development of the control units in the Affected Vehicles and actively participated in the development of the defeat device.

166. As discussed above, Bosch introduced a new generation of diesel ECUs for Volkswagen.

167. 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 control of combustion" and a

"[c]oncept tailored for all vehicle classes and markets." In the press release, Bosch touted the EDC17 as follows:[80]

> **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.

168. Bosch and Volkswagen worked together closely to modify the software and to create specifications for each Volkswagen 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. Such was the case with GM as well.

169. All Bosch ECUs, including the EDC17, run on complex, highly proprietary engine management software over which Bosch exerts nearly total

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[80] *See* Exhibit 14, 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.

control. In fact, the software is typically locked to prevent customers, like Volkswagen and GM, from making significant changes on their own.

170. 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 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.[81]

171. 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:[82]

> 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.

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[81] Exhibit 19, *Reliable Protection for ECUs*, ESCRYPT (May 12, 2016), https://www.escrypt.com/en/news-events/protection-for-ecus.

[82] Exhibit 20, 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/.

> 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.

172. Thus, Bosch GmbH and Bosch LLC cannot convincingly argue that the development of the Volkswagen defeat device was the work of a small group of rogue engineers.

173. 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.[83] Although Bosch publicly introduced the EDC17 in 2006, it had started to develop the engine management system years before.[84]

174. In fact, 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 vehicles were undergoing testing. As noted above, it has been said the decision

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[83] 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* Exhibit 18, *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.

[84] Exhibit 14, 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.

to cheat was an "open secret" at Volkswagen.[85] It was an "open secret" at Bosch as well.

175. 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.[86] 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, Volkswagen further developed this "akustikfunktion" for the affected vehicles.[87]

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[85] Exhibit 21, 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* Exhibit 22, 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").

[86] Exhibit 23, 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=MTI5ODU1.

[87] Exhibit 21, 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. Volkswagen Group Chairman Hans Dieter Poetsch explained that a small group of engineers and managers was involved in the creation of the manipulating software. *See* Exhibit 22, Jay Ramey, *VW chairman Poetsch: Company 'tolerated breaches of*

176. In sum, Bosch GmbH worked hand-in-glove with Volkswagen to develop and maintain the akustikfunktion/defeat device. On information and belief, it did so with GM as well.

**2. Volkswagen and Bosch conspired to conceal the illegal "akustikfunktion."**

177. By 2007, and likely earlier, Bosch GmbH was critical not only in developing the "akustikfunktion" but also in concealing it.

178. Bosch GmbH was concerned about getting caught participating in the defeat device fraud. As reported in a German newspaper, *Bild am Sonntag*, and a French publication, a Volkswagen internal inquiry found that in 2007, Bosch GmbH warned Volkswagen by letter that using the emissions-altering software in production vehicles would constitute an "offense."[88]

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*rules'*, Autoweek (Dec. 10, 2015), http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules. *See also* Exhibit 17, Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015), http://www.bbc.com/news/business-34324772; Exhibit 24, Matt Burt, *VW emissions scandal: how Volkswagen's 'defeat device' works*, Autocar (Sept. 23, 2015), http://www.autocar.co.uk/car-news/industry/vw-emissions-scandal-how-volkswagens-defeat-device-works.

[88] Exhibit 25, *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; Exhibit 26, *VW Scandal: Company Warned over Test Cheating Years Ago*, BBC (Sept. 27, 2015), http://www.bbc.com/news/business-34373637.

### 3. Volkswagen and Bosch conspired in the U.S. and Germany to elude U.S. regulators who regulated not just Volkswagen diesels but all diesels.

179. The purpose of the defeat device was to evade stringent U.S. emissions standards. Once Bosch GmbH, Bosch LLC, and Volkswagen perfected the defeat device, therefore, their attention turned to deceiving U.S. regulators not just for the benefit of Volkswagen but also for the benefit of GM, Mercedes, and FCA.

180. Bosch's North American subsidiary, defendant Robert 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 affected vehicles passed U.S. emissions tests. Bosch LLC employees frequently communicated with U.S. regulators and actively worked to ensure the affected vehicles were approved by regulators.

181. 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 U.S. regulators about the affected vehicles—particularly CARB.

**4. Bosch kepts GM's secret safe and pushed "clean" diesel in the U.S. as a concept applicable to all diesel car manufacturers.**

182. During the time of its efforts to promote "clean diesel," Bosch LLC and Bosch GmbH were each aware that BMW, General Motors, Volkswagen, Audi, Porsche, FCA, Ford and Mercedes could not meet emissions requirements without turning down or derating emission controls. Bosch not only kept this dirty secret safe, it went a step further and actively promoted "clean diesel" in the United States, including making affected vehicles available for regulators to drive.

183. 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.[89] Its efforts ended up being a multi-year, multi-million dollar effort involving key players from both Robert Bosch GmbH in Germany and Bosch LLC in the U.S.

184. Bosch's promotion of diesel technology specifically targeted the U.S. For example, Bosch put on "California Diesel Days"[90] and "SAE World Congress in Detroit."[91] In 2008, Bosch LLC and Volkswagen America co-sponsored the

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[89] Exhibit 27, Edmund Chew, *Bosch boosts US diesel lobbying*, Autonews (Mar. 8, 2004), http://www.autonews.com/article/20040308/SUB/403080876/bosch-boosts-us-diesel-lobbying.

[90] Exhibit 28, *Bosch drives clean diesel in California*, Bosch, http://www.bosch.us/content/language1/html/734_4066.htm?section=28799C0E86C147799E02226E942307F2 (last accessed May 24, 2017).

[91] *See, e.g.*, Exhibit 29, *Bosch Brings Innovation, Green Technology to SAE 2009 World Congress*, Bosch, http://www.bosch.us/content/language1/html/734_

"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."[92]

185. 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 affected vehicles to comply with emissions regulations.

186. On October 28, 2008, Bosch North America issued a release entitled: "Bosch Powers Audi Clean Diesel Across the U.S. and Around the World." The October release was much broader than the promotion of Audi. It was a promotion of Bosch and its role in "clean diesel" in a broad sense to further the diesel conspiracies and Bosch's objective in falsely promoting "clean diesel." The irony is glaring because Bosch knew the Audi was not clean. Bosch, thus made the following pronouncements:

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7432.htm?section=CDAF31A468D9483198ED8577060384B3 (last accessed May 24, 2017).

[92] Exhibit 30, *Bosch: Clean Diesel is Key Part of Future Technology Mix*, Bosch, http://us.bosch-press.com/tbwebdb/bosch-usa/en-US/PressText.cfm?CFID=60452038&CFTOKEN=9c778a2564be2c9b-56CC21B6-96AB-5F79-32445B13EC121DBE&nh=00&Search=0&id=364 (last accessed May 24, 2017).

> Bosch, the worldwide leader in powertrain development, was selected by Audi to supply the common rail system that includes the electronic control unit (ECU), rail, pump and injectors, the dosing module and control unit for the Denoxtronic system, as well as various sensors for powertrain and exhaust gas aftertreatment in the Q7 3.0 TDI. The Denoxtronic reduction-agent metering system from Bosch permits further reductions in the emissions of diesel engines. It is a central component of the SCR system (Selective Catalytic Reduction).
>
> "The Audi Mileage Marathon provides opportunity for people to experience torque, fuel economy and other benefits of today's clean diesel technology in action," said Bernd Boisten, regional president, diesel systems North America, Robert Bosch LLC. "We call today's diesel Good, Clean, Fun. We wish all participants safe journeys and look forward to their reactions to clean diesel's fuel efficiency, low emissions and exceptional performance."
>
> Clean diesel technology combines clean diesel fuel, advanced engines and effective exhaust control technology into a complete package that is more efficient, environmentally friendly and fun to drive. Today, a clean diesel engine is one of the "greenest" powertrain options on the market.
>
> Bosch has been promoting the benefits of clean diesel in anticipation of the new 50-state compliant diesel powered vehicles, such as the Audi Q7 3.0 TDI, coming to market in the U.S.

187. In April 2009, Bosch LLC organized and hosted a two-day "California Diesel Days" event in Sacramento, California. Bosch invited a roster of

lawmakers, journalists, executives, regulators, and NGOs[93] with the aim of changing perceptions of diesel from "dirty" to "clean." The event featured affected vehicles as ambassadors of "clean diesel" technology, including a 2009 Volkswagen Jetta "green car." The stated goals were to "build support for light-duty diesel as a viable solution for achieving California's petroleum and emission reduction objectives."

188. In 2009, Bosch also became a founding member of the U.S. Coalition for Advanced Diesel Cars.[94] One of this advocacy group's purposes included "promoting the energy efficiency and environmental benefits of advanced clean diesel technology for passenger vehicles in the U.S. marketplace."[95] This group lobbies Congress, U.S. regulators, and CARB in connection with rules affecting "clean diesel" technology.[96]

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[93] Exhibit 28, *Bosch drives clean diesel in California*, Bosch, http://www.bosch.us/content/language1/html/734_4066.htm?section=28799C0E86C147799E02226E942307F2; *see also* Exhibit 31, *California Diesel Days*, The U.S. Coalition for Advanced Diesel Cars, http://www.californiadieseldays.com/.

[94] Exhibit 32, Chrissie Thompson, *New Coalition Aims To Promote Diesel Cars*, Automotive News (Feb. 2, 2009), http://www.autonews.com/article/20090202/OEM06/302029728/new-coalition-aims-to-promote-diesel-cars.

[95] Exhibit 33, *About the Coalition*, The U.S. Coalition for Advanced Diesel Cars, http://cleandieseldelivers.com/about/.

[96] *Id. See also, e.g.*, Exhibit 34, Letter to Chairman Mary Nichols and CARB concerning a statement made about diesel technology (Jan. 8, 2016), available at http://cleandieseldelivers.com/media/Mary-Nichols-Letter-01082016.pdf.

189. In 2010, Bosch sponsored the Virginia International Raceway with the support of the 2010 Volkswagen Jetta TDI Cup Series. This event included TDI vehicles featuring Bosch technology.[97]

190. In 2012, Audi, BMW, Bosch, Daimler, Porsche, and Volkswagen joined to form The Clearly Better Diesel initiative.[98] The initiative was announced in Berlin by the German Association of the Automotive Industry. Its stated goal was to promote the sale of clean diesel vehicles in the United States. The initiative's slogan was "Clean Diesel. Clearly Better."

191. In its efforts to promote "clean diesel," including the affected vehicles, Bosch GmbH acted on behalf of its global group.

**5. Bosch is a recidivist cheater: Bosch also made the EDC17 found in FCA vehicles that pollute excessively.**

192. To appeal to environmentally conscious consumers, FCA *vigorously* markets its "EcoDiesel" vehicles as "clean diesel" with ultra-low emissions, high fuel economy, and powerful torque and towing capacity. FCA calls its EcoDiesel "ultra clean," "emissions compliant," and claims that "***no NOx***" exits the tailpipe.

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[97] Exhibit 35, *Volkswagen Jetta TDI Cup Drivers Take to the Track for the First Time in 2010 at VIR*, Volkswagen of America, Inc. (April 23, 2010), available at http://www.prnewswire.com/news-releases/volkswagen-jetta-tdi-cup-drivers-take-to-the-track-for-the-first-time-in-2010-at-vir-91985604.html.

[98] Exhibit 36, *"Clean Diesel Clearly Better" Campaign for Clean Diesel Cars Welcomed*, Diesel Technology Forum (Dec. 12, 2012), available at http://www.prnewswire.com/news-releases/clean-diesel-clearly-better-campaign-for-clean-diesel-cars-welcomed-183261432.html.

FCA charges a premium for EcoDiesel-equipped vehicles. For example, selecting the 3.0-liter EcoDiesel engine for the 2016 Dodge Ram 1500 Laramie adds $4,770 to the purchase price. And the 2016 Jeep Grand Cherokee Overland EcoDiesel costs $4,500 more than its gasoline counterpart.

193. These representations are deceptive and false. FCA programmed its EcoDiesel vehicles to significantly reduce the effectiveness of the NOx reduction systems during real-world driving conditions. The EPA has determined that the affected vehicles contain defeat devices. After a lawsuit had already been filed by Plaintiffs' counsel in this case, on January 12, 2017, the EPA issued a Notice of Violation against FCA because FCA "failed to disclose Auxiliary Emission Control Devices (AECDs)" in the affected vehicles.[99] The EPA identified eight specific devices that cause the vehicle to perform effectively when being tested for compliance and then reduce the effectiveness of the emission control system during normal operation and use.

[99] Exhibit 37, EPA's January 12, 2017 Notice of Violation to FCA, available at https://www.epa.gov/sites/production/files/2017-01/documents/fca-caa-nov-2017-01-12.pdf.

194. "Once again," said CARB Chair Mary D. Nichols about FCA's cheating, "a major automaker made the business decision to skirt the rules and got caught."[100]

195. The same experts that tested the Cruze Diesel's performance did on-road testing of the FCA vehicles and confirmed that FCA's so-called EcoDiesel vehicles produced NOx emissions at an average of 222 mg/mile in city driving (four times the FTP standard of 50 mg/mile) and 353 mg/mile in highway driving (five times higher than the U.S. highway standard of 70 mg/mile). In many instances, NOx values were in excess of 1,600 mg/mile, more than 20 times the standards. This testing uncovered many of the defeat devices listed in the EPA notice of violation ahead of EPA's announcement.

196. Bosch made the EDC17 for the polluting FCA vehicles.

**6. Bosch is a recidivist cheater: Bosch GmbH also made the EDC17 found in polluting Mercedes diesels.**

197. Plaintiffs' experts in this case tested the Mercedes diesel vehicles and made the first public disclosure of Mercedes' unlawful conduct through certain of the counsel in this case in a civil suit filed in the District of New Jersey. Reportedly as a result of that lawsuit, Mercedes is under investigation by the Department of Justice and German authorities with respect to its BlueTEC diesel vehicles. Over

[100] Exhibit 38, EPA News Release, *EPA Notifies Fiat Chrysler of Clean Air Act Violations* (Jan.12, 2017), available at https://www.epa.gov/newsreleases/epa-notifies-fiat-chrysler-clean-air-act-violations.

14 Mercedes diesel models are alleged to produce emissions 8.1 to 19.7 times relevant standards. Bosch GmbH supplied the EDC17 in the polluting Mercedes vehicles.

**7. Bosch is a recidivist cheater: Bosch GmbH and Bosch LLC also made the EDC17 found in 700,000 polluting General Motors trucks.**

198. Bosch made the EDC17 found in the 2011-2016 General Motors Sierra 2500 and 3500 HD trucks and Chevrolet Silverado HD trucks.

199. Bosch supplied the software and function sheets for these vehicles and enabled the vehicles to have three different cheat devices.

200. GM Defeat Device No. 1 reduces or derates the emissions system when temperatures are above the emissions certification test range (86°F). GM Defeat Device No. 2 operates to reduce emission control when temperatures are below the emissions certification low temperature range (68°F). Testing reveals that at temperatures below 68°F (the lower limit of the certification test temperature), stop-and-go emissions are 2.1 times the emissions standard at 428 mg/mile (the standard is 200 mg/mile). At temperatures above 86°F, stop-and-go emissions are an average of 2.4 times the standard with some emissions as high as 5.8 times the standard. Based on temperatures in the top 30 metropolitan areas, these vehicles are operating with the emissions systems derated a material amount of their vehicle miles travelled. But the emission scheme is a step more nefarious:

enter GM Defeat Device No. 3, which reduces the level of emission controls after 200–500 seconds of steady speed operation in all temperature windows, causing emissions to increase on average of a factor of 4.5. Based on a study of temperatures in 30 major metropolitan areas as well as the demographics of Silverado and Sierra sales, Plaintiffs' experts estimate that due to just the temperature-triggered defeat devices, the vehicles operate at 65–70% of their miles driven with emissions that are 2.1 to 5.8 times the standard.

201. Increased sales and thus increased profits drove General Motors to use at least these three defeat devices in its Duramax diesel engines. By reversing the traditional order of the exhaust treatment components and putting the Selective Catalytic Reduction (SCR) in front of the Diesel Particulate Filter (DPF), General Motors could obtain and market higher power and fuel efficiency from its engines while still passing the cold-start emissions certification tests. This made the trucks more appealing and competitive in the marketplace, driving up sales and profits. But the reordering would have also drastically increased the need to employ Active Regeneration (i.e., burning off collected soot at a high temperature) and other power- and efficiency-sapping exhaust treatment measures, reversing the very advantage gained. General Motors' solution, with the participation of Defendants Robert Bosch GmbH and Robert Bosch LLC, was to install defeat devices to purposefully reduce SCR dosing, increase NOx emissions, and thus decrease

Active Regeneration. The defeat devices allowed General Motors to have its cake and it eat too. It could gain the advantage of hot exhaust going into the SCR system needed to pass cold-start tests, while avoiding the fuel- and power-robbing Active Regeneration procedure that the DPF filter requires when the SCR treatment comes first. General Motors turned a blind eye to the twofold to fivefold increase in deadly NOx emissions its scheme caused—all to drive up its sales and profits.

**8. Bosch is a recidivist cheater: Bosch also made the EDC17 found in 500,000 polluting Ford Trucks.**

202. Bosch made the EDC17 found in Ford's top selling F-250 and F-350 "Super Duty" Diesel Trucks.

203. Bosch supplied the software and function sheets for these vehicles and enabled the vehicles to use defeat devices to turn down or off emissions controls.

204. Plaintiffs' on-road testing has confirmed that Ford's Super Duty vehicles produce NOx emissions in an amount demonstrating that they are not the "cleanest Super Duty diesel" vehicles that meet emission standards; rather, Ford has programmed the vehicles so that in a wide range of common driving conditions, the emissions systems are powered down, producing NOx far in excess of emissions standards. A reasonable consumer would not expect their Super Duty vehicle to spew unmitigated NOx in this fashion while driving in the city or on the highway, nor would a reasonable consumer expect that fuel economy was achieved in part by turning off or derating the emission systems; nor would a reasonable

consumer expect that if the emissions were as-promised, the advertised fuel economy and performance could not be achieved.

205. In stop-and-go conditions, including those identical to the FTP-75 certification cycle, emissions are routinely as high as five times the standard. In certain common driving conditions, such as modest uphill road grades, or with the use of a trailer that adds weight, emissions exceed the standard by 30 to 50 times. Ford advertised these vehicles as having "best-in-class towing capabilities" and expected Super Duty trucks to pull significant loads. Ford failed to disclose that "best-in-class towing" came with a byproduct of high NOx emissions, sometimes exceeding legal standards by 30 to 50 times. In stop-and-go driving, testing reveals that the vehicles operate 69% of the time above the emissions standard, 45% of the time at twice the standard, and 9% of the time at five times the standard. These vehicles should more properly have been called "Super Dirty."

**J. Bosch has previously violated U.S. law.**

206. On March 31, 2015, Robert Bosch GmbH pled guilty and agreed to pay a $57.8 million criminal fine for its role in a conspiracy to fix prices and rig bids for spark plugs, oxygen sensors, and starter motors sold to automobile and internal engine combustion manufacturers in the United States.

### K. Bosch also played a critical role in falsely promoting clean diesel technology via the "Diesel Technology Forum."

207. It's not unheard of for manufacturers of dangerous products to use trade associations to cover up the danger of their products. Tobacco companies created several trade associations to promote phony science claiming tobacco use was neither harmful or addictive. The opioid manufacturers did the same and Bosch did so with respect to clean diesel. Bosch was a member of the Diesel Technology Forum ("DTF") a "non-profit" dedicated "to raising awareness about the importance of diesel engines." The DTF was formed in 2000, and its members include Bosch, Daimler, GM, and FCA. Bosch was aware that cars made by BMW, GM, FCA, and Mercedes used cheat devices to meet emissions requirements and were not the "clean diesel" as claimed. Despite this knowledge, Bosch, as a member of the DTF and as part of its complicit conduct in promoting illegal diesels, authorized a steady stream of announcements about "clean diesel technology," as described below.

208. For example, the DTF, on December 12, 2012, issued a press release proclaiming "Clean Diesel. Clearly Better" and highlighted new diesel models coming to the U.S. The release noted that the new "Clean Diesel" campaign was announced jointly by Audi, BMW, Bosch, Daimler, Porsche, and Volkswagen.

December 12, 2012 | Diesel Technology Forum

DIESEL TECHNOLOGY FORUM

PRESS RELEASE

# "CLEAN DIESEL. CLEARLY BETTER." CAMPAIGN FOR CLEAN DIESEL CARS WELCOMED

**Contact: Steve Hansen (301) 668-7230 shansen@dieselforum.org**

**New Effort by German Automakers to Promote Diesel Cars in U.S.**

Washington, D.C. – The first ever joint promotion campaign by German automakers to promote clean diesel vehicles in the U.S. was welcomed today with the hope that it can accelerate current market successes for domestic clean diesel vehicle sales, according to Allen Schaeffer, the Executive Director of the Diesel Technology Forum (/).

The new promotional diesel campaign was announced today in Berlin by the German Association of the Automotive Industry (http://www.vda.de/en/index.html) (VDA) and member companies – Audi, BMW, Bosch, Daimler, Porsche and Volkswagen.

"We welcome this new effort to raise awareness of American car buyers to all of the benefits of the new generation of clean diesel technology," Schaeffer said. "People who know about the new clean diesel technology are extremely impressed by the improved fuel efficiency, power and lower emissions over gasoline and hybrid autos."

The slogan "Clean Diesel. Clearly Better." was unveiled along with the promotional effort's new website – www.clearlybetterdiesel.org (http://www.clearlybetterdiesel.org/) – which includes information highlighting the advantages of modern clean diesel passenger cars over gasoline engines "in terms of cleanliness, consumption and performance," according to VDA.

"The success of diesel technology is well documented in Western Europe where 55 percent of all new auto sales are clean diesels. Even though diesels represent a more modest three percent of all new vehicle sales in the U.S., we're in the midst of a resurgence of diesel in America and can easily see this percentage doubling and tripling in the next five to 10 years," said Schaeffer.

"Today's clean diesels are fast, efficient, and clean - a far cry from previous diesels in the 1970s and 1980s. Consumers are taking to new clean diesels for their long-term green value as evidenced by diesel sales increases of 24.5 percent through November 2012 compared to 2011, according to Hybrid Cars.com and Baum and Associates. Diesel sales have increased in 27 of the past 28 months in year-over-year sales, with 24 of these months showing double-digit increases. In addition, sales increased by 20 percent or better in 20 of the past 28 months.

"The growing role that clean diesel technology will play here in the U.S. meeting federal fuel economy goals is evident by the anticipated major increase in the number of diesel offerings that will be available in the U.S. in the next 12 to 18 months," Schaeffer said.

"With higher and fluctuating fuel prices, Americans are seeking more fuel efficient cars (/index.cfm?objectid=1CDF6110-DA5D-11E0-8228000C296BA163)," Schaeffer said. "The new U.S. federal fuel efficiency standards that will required a 54.5 mpg average by 2025 will significantly boost clean diesel auto sales because diesel cars (/index.cfm?objectid=7BCD5900-B1BF-11E0-8DA1000C296BA163) are 20 to 40 percent more fuel efficient than gasoline versions."

Schaeffer said the U.S. Energy Information Administration (EIA) forecasts that compared to 2012 the price of diesel fuel will decline by about 3 percent in 2013 to $3.83/gallon.

**New Clean Diesels Coming To the U.S. Market**

Schaeffer said a number of additional diesels will be available soon in the U.S. including:

- Audi A6, A7, A8 and Q5 TDI diesels will be available in 2013 joining the Q7 and A3 TDI to bring Audi's diesel offerings to a total of six. A TDI clean diesel A4 version is also expected in 2014 or early as 2013.

- BMW announced that the U.S. market will see a 2.0-liter four cylinder diesel and 3.0-liter inline six diesel engine in the next 12 months.

- Chrysler will introduce its new Jeep Grand Cherokee Ecodiesel in 2013.

- Ford will offer a new diesel Transit full-size commercial van in 2013.

- General Motors will offer a Cadillac ATS diesel and a diesel version of the Chevrolet Cruze in 2013.

- Mazda will become the only Asian car manufacturer to sell diesel cars in the U.S. when it introduces its SKYACTIV-D 2.2-liter clean diesel engine.

- The Mercedes S350 BlueTEC marks the return of the diesel-powered Mercedes-Benz S-Class to the United States in 2012. Mercedes also plans to bring a diesel in the GLK and C-class for a total of eight diesel models by 2014.

**ABOUT THE DIESEL TECHNOLOGY FORUM**

**The Diesel Technology Forum is a non-profit national organization dedicated to raising awareness about the importance of diesel engines, fuel and technology. Forum members are leaders in clean diesel technology and represent the three key elements of the modern clean-diesel system: advanced engines, vehicles and equipment, cleaner diesel fuel and emissions-control systems. For more information visit www.dieselforum.org (/).**

Exhibit 36, https://www.dieselforum.org/news/clean-diesel-clearly-better-campaign-for-clean-diesel-cars-welcomed

209. As part of the continuing and false clean diesel promise, DTF posted on its website after the Volkswagen scandal that the new diesel technology enables emissions control systems that met "near zero" emissions standards.

ABOUT CLEAN DIESEL

# WHY DIESEL ISN'T DIRTY

*With a higher degree of certainty than ever before, we can say that diesel is a clean technology.*

## The Clean Diesel Journey

Diesel is a technology of continuous improvement and that goes for the fuel as well. Ultra-low sulfur diesel fuel has been the standard for both on-highway and off-highway diesel engines nationwide since 2007. By cutting sulfur levels in diesel fuel by 97 percent, immediate clean air benefits accrued - through lower soot emissions from all diesel vehicles and equipment using the fuel (both old and new) by 10 percent. Reducing the sulfur content of diesel fuel is similar to removing lead from gasoline during the 1970s.

Cleaner diesel fuel is the foundation that enabled the development and introduction of a new generation of advanced engines and emission control devices to meet strict "near zero" emissions standards.

210. The DTF posted on its website information about "Clean Diesel" proclaiming "near zero emissions."

DIESEL TECHNOLOGY FORUM

ABOUT CLEAN DIESEL

**WHAT IS CLEAN DIESEL?**

*Cleaner diesel fuel, advanced engines and effective emissions control technology make up a new generation of diesel. It's clean diesel.*

What is clean diesel?

What makes it different from regular diesel?

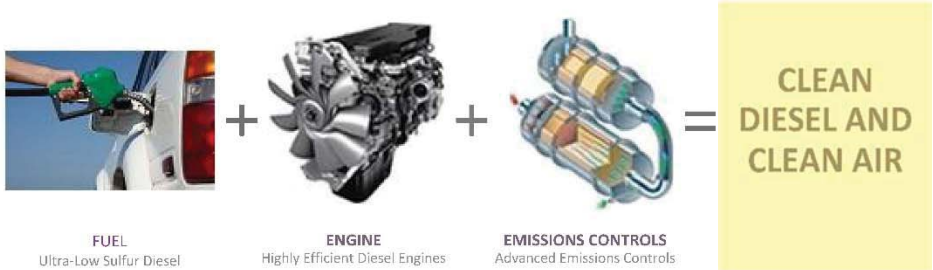
Clean diesel is the new generation of diesel technology.

Today's ultra-low sulfur diesel fuel, advanced engines and effective emissions control combine to achieve near zero emissions that is smoke free. Clean diesel has proven energy efficiency, and ability to use a wide range of renewable fuels that position diesel as a key technology for growing economies to achieve cleaner air, lower greenhouse gas emissions and a sustainable environment around the world.

Cleaner diesel fuel, advanced engines and effective emissions control make up a new generation of diesel. It's clean diesel.

211. The DTF website claimed the clean diesels resulted in "Clean Diesel and Clean Air," and that the manufacturers had "Effective Emissions Controls":

# NEW CLEAN DIESEL TECHNOLOGY




## Cleaner Diesel Fuel

Clean diesel fuel - containing 97 percent less sulfur - is now the standard for both on-highway and off-highway diesel engines nationwide. Using this ultra-low sulfur diesel (ULSD) immediately cuts soot emissions from diesel vehicles and equipment by 10 percent. Reducing the sulfur content of diesel fuel is similar to removing lead from gasoline during the 1970s.

Cleaner diesel fuel enables the development of a new generation of advanced engines and emission control devices that can't operate effectively with higher sulfur content in diesel fuel.

## Why is diesel technology so fuel efficient?

A combination of the energy-rich properties of the fuel, and the efficiency and completeness of the combustion of fuel to create useful mechanical energy. Diesel is a petroleum-based fuel with the highest energy density among transportation fuels - that's more energy per gallon than other alternatives. The U.S. Energy Information Administration states that few transportation fuels surpass the energy density of diesel (http://www.eia.gov/todayinenergy/detail.cfm?id=9991).

Read DTF's Diesel Fuel Study - Diesel: Fueling the Future in a Green Economy (/index.cfm?objectid=346EBC1F-A348-11E0-B3DD000C296BA163).

## Advanced Engines

Diesel is the world's most efficient internal combustion engine. It provides more power and more fuel efficiency than alternatives such as gasoline, compressed natural gas or liquefied natural gas. Read more about the history of the diesel engine (/files/dmfile/DieselHistory.pdf).

Fuel combustion is the primary difference between gasoline and diesel engines. Gasoline engines ignite fuel with spark plugs, whereas diesels ignite fuel with compression. Inside the engine, the combustion of air and fuel takes place under pressure and heat created by compressing the air-fuel mixture so intensely that it combusts spontaneously, releasing energy, that is transmitted to powering the wheels on a vehicle, the piston's motion and creating mechanical energy.

Advanced new technologies such as electronic controls, common rail fuel injection, variable injection timing, improved combustion chamber configuration and turbocharging have made diesel engines cleaner, quieter and more powerful than past vehicles.

## Effective Emissions Control

Manufactures have been very innovative with the methods used to meet emission standards using a variety of aftertreatment technologies and advanced engine systems that do not involve the use of additional emissions control technology, particularly in the off-road sector.

Introduction of ultra-low sulfur diesel fuels for both on- and off-road applications is a central part of the clean diesel system designed to meet near zero emissions standards. With the introduction of lower sulfur diesel fuel came the ability to use a number of exhaust aftertreatment options such as diesel particulate filters (DPF), exhaust gas recirculation (EGR), diesel oxidation catalysts (DOC), and selective catalyst reduction (SCR) with the use of diesel exhaust fluid (DEF) that can be sensitive to the sulfur levels in the fuel.

The installation of various emission control technologies may also improve emissions from older diesel engines through retrofit capabilities. Read more about retrofit capabilities to reduce emissions from older vehicles and equipment (/retrofit).

212. A document entitled "Diesel: Fueling the Future in a Green Economy," by Hart Energy Consulting, prepared for the Diesel Technology Forum, October 13, 2010,[101] was posted on the DTF website and proclaimed that:

> P. 3 - "**Introduction of advanced diesel technology in 2007 that relied on ultra low sulfur clean diesel fuel has today reduced emissions of particulate matter and nitrogen oxides**—an ozone precursor— by more than 98% in heavy-duty truck applications compared to 2000 models. It has enabled introduction of high performance diesel cars, trucks and SUVs that are cleaner, quieter and safer than ever."
>
> P. 9 - "**Fuel economy advantages of 20% to 35% for diesel fuel/engines over gasoline vehicles will also provide options for meeting low carbon fuel objectives and reducing GHG emissions**. California has initiated a low carbon fuel initiative and the U.S. EPA has promulgated its first GHG control requirements in the form of vehicle CO2 reduction regulations. Congress continues to debate on climate change and related GHG initiatives."
>
> P. 10 - "**These new levels of near-zero emissions are being met through advancements in the engine fuel and air management systems that dramatically improve combustion efficiency, and the use of ultra-low sulfur diesel fuel that enables the use of high efficiency exhaust control**. As a result, new trucks and buses are more than 98% cleaner than 2000-era models (Figure 3). In fact, results from the first phases of joint government and industry research (Advanced Collaborative Emissions Study, ACES) have demonstrated that the emissions reductions from these technologies have actually exceeded requirements,

[101] Exhibit 39, http://www.dieselforum.org/files/dmfile/Diesel-FuelingtheFutureinaGreenEconomy.pdf.

providing substantially greater performance and benefits than anticipated."

P. 11 - "While new engines are now on a path to near-zero emissions, **the widespread availability of cleaner diesel fuel has created new and substantial efforts to modernize and upgrade emissions performance of existing engines and equipment**. A 2009 Report to Congress by U.S. EPA on results of the first year of a federal program to fund diesel retrofits (Diesel Emissions Reduction Program) found it to be among the most cost effective clean air programs, yielding over $13 in environmental and public health benefits for each $1 invested."

P. 27 - "**The diesel industry is in the midst of implementing advanced engine and emissions control technology that will lower emissions from on-road vehicles and non-road machines and equipment by more than 98% relative to 2000 era technology. Continued investments and research to further increase fuel efficiency while lowering emissions will keep diesel engines for light duty vehicles competitive with other technologies.**"

## L. The damage from excessive NOx

### 1. Environmental harm

213. Plaintiffs do not seek damage for the harm to the environment they have unwittingly caused. However, it is important to understand why (1) NOx is regulated and (2) why a reasonable consumer would not want his or her vehicle to dump NOx into the air.

214. NOx contributes to ground-level ozone and fine particulate matter. According to the EPA, "[e]xposure 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."

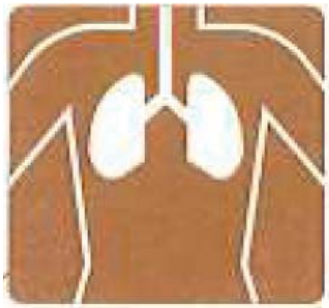
215. The EPA describes the danger of NOx as follows:

**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.

216. A recent study published in NATURE estimates that there are 38,000 deaths worldwide due to excess NOx emissions. And recently, a study commissioned by the Federal Office for the Environment (Germany) concluded that 6,000 people died prematurely in 2014 from illnesses known to be caused or aggravated by NOx exposure. Plaintiffs here do not seek damages to the injury to the environment, but Plaintiffs did not intend to drive cars whose emissions manipulation would deliberately injure the environment.

**2. Economic harm specifically alleged here.**

217. Plaintiffs and members of the class paid a premium for a diesel Cruze, as GM charged more for its diesel car than a comparable gas car. Depending on trim level, the premium was as much as $2,400.

218. As a result of GM's 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, or had they known of the effects on fuel economy if the emissions were not manipulated, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. In addition, Plaintiffs could not have lawfully purchased these vehicles because without the scheme these vehicles could not have been sold. Further, the only reason a consumer would buy a diesel is for improved emissions and/or fuel economy. Without these attributes there is no need for a diesel engine. Hence, alternately for the RICO claim Plaintiffs' damage is the entire purchase price less some amount for use of the vehicle.

219. Plaintiffs have also been harmed and injured by the fact that they unwittingly drove vehicles that were not legally on the road and unwittingly drove vehicles that were polluting in volumes and manners a reasonable consumer would not expect. This harm can be measured and precisely monetized through expert conjoint and economic analysis that will be presented later in this case.

## VI. TOLLING OF THE STATUTE OF LIMITATIONS

### A. Discovery Rule Tolling

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

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

222. 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 GM 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 GM 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 GM valued profits over truthful marketing and compliance with law.

223. 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**

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

225. 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, GM 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

226. GM 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.

227. GM 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.

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

## VII. CLASS ALLEGATIONS

229. 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 (collectively, the "Class"):

All persons who purchased or leased a Chevrolet Cruze ("Affected Vehicles"). Plaintiffs assert claims under the laws of each state set forth below.

230. Excluded from the Class are individuals who have personal injury claims resulting from the high emissions in the GM Clean Diesel system of Affected Vehicles. Also excluded from the Class are GM 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. Plaintiffs reserve the right to revise the Class definition based upon information learned through discovery.

231. 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.

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

233. **Numerosity**. Federal Rule of Civil Procedure 23(a)(1): The members of the Class 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 GM's 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.

234. **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 GM and Bosch engaged in the conduct alleged herein;

b) Whether GM designed, advertised, marketed, distributed, leased, sold, or otherwise placed Polluting GM Vehicles into the stream of commerce in the United States;

c) Whether the GM engine system in the Polluting GM Vehicles emits pollutants at levels that do not make them "clean" diesels;

d) Whether GM and Bosch omitted material facts about emissions, and fuel economy;

e) Whether GM and Bosch knew about the comparatively high emissions and, if so, how long GM and Bosch have known;

f) Whether GM and Bosch designed, manufactured, marketed, and distributed Polluting GM Vehicles with defective or otherwise inadequate emission controls;

g) Whether GM and Bosch's conduct violates RICO and consumer protection statutes, and constitutes breach of contract and fraudulent concealment, as asserted herein;

h) Whether there is an Enterprise;

i) Whether Bosch participated in the Enterprise;

j) Whether GM and Bosch omitted and failed to disclose material facts;

k) Whether Plaintiffs and the other Class members overpaid for their vehicles at the point of sale; and

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

235. **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 GM's wrongful conduct as described above.

236. **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.

237. **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 GM, so it would be impracticable for the members of the Classes to individually seek redress for GM's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and

provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## A. RICO Claims

### COUNT I

### VIOLATIONS OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO) VIOLATION OF 18 U.S.C. § 1962(C), (D)

238. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

239. Plaintiffs bring this Count individually and on behalf of the Nationwide RICO Class against Defendants GM, Robert Bosch GmbH, and Robert Bosch LLC (collectively, "RICO Defendants").

240. 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."

241. 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."

242. 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 GM's share of the diesel passenger car 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 ("Cruze Diesel Fraud Enterprise") whose direct purpose was to deceive the regulators and the public into believing the Affected Vehicles were "clean" and "environmentally friendly." As explained in greater detail below, the RICO Defendants' acts in furtherance of the Cruze Diesel Fraud Enterprise violate Section 1962(c) and (d).

**1. The members of the Cruze Diesel Fraud Enterprise**

243. Upon information and belief, the Cruze Diesel Fraud Enterprise consisted of at least the following entities and individuals: GM, Robert Bosch GmbH, and Robert Bosch LLC.

244. Robert Bosch GmbH and Robert Bosch LLC tested, manufactured, and sold the electronic control module (ECM) that managed the emissions control system used by GM in the Affected Vehicles. This particular ECM is more formally referred to as the Electronic Diesel Control Unit 17.

245. 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. 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 GM for use in the Affected Vehicles.

246. Bosch worked with GM, Volkswagen, Mercedes, BMW and 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 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 Mercedes vehicles.[102]

247. Bosch's conduct with respect to Volkswagen and other manufacturers, outlined below, adds plausibility to its participation in the enterprise described

[102] Exhibit 20, 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/.

herein. For example, Bosch was well aware that the EDC Unit 17 would be used by automobile manufacturers, including GM, to cheat on emissions testing. 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.

248. EDC Unit 17 could not effectively lower NOx 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.

249. The EDC17 ECU was manufactured by Bosch GmbH and sold to GM. Bosch built the ECU hardware and developed the software running in the ECU. Bosch developed software documentation that documents the functional behavior of a particular release of the ECU firmware. [redacted].[103] [redacted][104] [redacted]

[103] *See, e.g.*, page 1 of GMCOUNTS000006297.

[104] *E.g.*, GMCOUNTS000115370 at 2470.

[redacted] [105]

250. As was publicly reported, the Bosch defendants, seeking to conceal their involvement in the unlawful Cruze Diesel 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.[106] The exact same logic applies to the GM Affected Vehicles—*i.e.*, they could not be lawfully operated with the defeat device.

251. 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

[105] GMCOUNTS000107794; Exhibit 15, Moritz Contag *et al.*, How They Did It: An Analysis of Emission Defeat Devices in Modern Automobiles, p.6-7 (2017).

[106] Exhibit 40, 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.

units to GM for use in Affected Vehicles, as well as hundreds of thousands of units to Mercedes and FCA.[107]

252. The persons and entities described in the preceding section are members of and constitute an "association-in-fact" enterprise.

253. At all relevant times, the Cruze Diesel 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 GM, 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 Cruze Diesel Fraud Enterprise shared in the 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.

254. The Cruze Diesel Fraud Enterprise functioned by selling vehicles and component parts to the consuming public. Many of these products are legitimate,

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[107] Exhibit 20, 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/.

including vehicles that do not contain defeat devices and software capable of allowing the engine to manipulate the software such that the emissions system is turned on or off at certain times. 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.

255. The Cruze Diesel 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.

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

257. Each participant in the Cruze Diesel Fraud Enterprise had a systematic linkage to each other through corporate ties, contractual relationships, financial ties, and continuing coordination of activities. Through the Cruze Diesel 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.

258. The RICO Defendants participated in the operation and management of the Cruze Diesel 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.

259. GM exerted substantial control and participated in the affairs of the Cruze Diesel Fraud Enterprise by:

a. Designing in conjunction with Robert Bosch GmbH the Affected Vehicles with defeat devices;

b. Failing to correct or disable the defeat devices;

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 COC and/or 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 defects 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.

260. Bosch also participated in, operated, and/or directed the Cruze Diesel 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 GM to develop, customize, and calibrate the defeat devices. Additionally, Bosch continuously cooperated with GM 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.

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

262. 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.

263. The members of the Cruze Diesel 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 Cruze Diesel 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. GM sold more Affected Vehicles by utilizing an emissions control system that was cheaper to install and allowed for generous performance and efficiency tuning, all while charging consumers a premium for purportedly

"clean" and "fuel efficient" Affected Vehicles. The Bosch defendants, in turn, sold more EDC Units because GM 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.

264. The RICO Defendants continued their enterprise even after the Volkswagen scandal became public in September 2015. GM continued to manufacture and sell 2016 Affected Vehicles. Assuming top executives at GM did not know of the defeat devices in its vehicles (an assumption not true of Volkswagen or Bosch), a responsible chief executive would have inquired: Do we have a diesel problem? Either top executives at GM failed to ask questions or they agreed to continue a cover-up because GM did not stop selling Affected Vehicles and has continued to conceal the truth.

**2. The Predicate Acts**

265. 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 Cruze Diesel Fraud Enterprise through a pattern of racketeering activity that employed the use of mail and wire facilities, in violation of 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud).

266. 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.

267. 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 COCs and EOs;

g. Vehicle registrations and plates as a result of the fraudulently-obtained COCs and 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;

o. SEC filings where GM has failed to disclose the scheme and has continued to do so post the Volkswagen scandal; and

p. Other documents and things, including electronic communications.

268. 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.

269. The RICO Defendants also used the Internet and other electronic facilities to carry out the scheme and conceal the ongoing fraudulent activities. Specifically, GM made misrepresentations about the Affected Vehicles on GM 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.

270. 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.

271. 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 or vehicles with a "remarkable reduction in emission."

272. Many of the precise dates of the fraudulent uses of 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.

273. Plaintiffs have also alleged specific dates of mail and wire fraud to the best of their ability based on GM's current production of documents.

274. 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.

275. 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.

276. 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.

277. 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).

278. 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.

279. The RICO Defendants knew and intended that government regulators, as well as Plaintiffs and Class members, would rely on the material misrepresentations and omissions made by them about the Affected Vehicles. The RICO Defendants knew and intended that 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: (1) they purchased hundreds of thousands of vehicles that never should have been introduced into the U.S. stream of commerce and whose worth is far less than was paid. 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, GM could not have obtained valid COCs and EOs to sell the Affected Vehicles.

280. 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.

281. 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.

282. The predicate acts all had the purpose of generating significant revenue and profits for the RICO Defendants at the expense of Plaintiffs, the Class, and consumers. The predicate acts were committed or caused to be committed by the RICO Defendants through their participation in the Cruze Diesel 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.

283. 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."

284. 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 at the time of purchase overpaid for their vehicles. Plaintiffs would not have purchased their vehicles because they would not have done so if GM truthfully disclosed the vehicles were unlawfully on the road. Further, the only benefit a diesel offers a purchaser of a car, over a gas-powered car, is improved emissions and fuel economy. Plaintiffs would not have bought their vehicles if the truth had been told that the two main attributes that make diesel cars worth buying—lower emissions and better fuel economy—were not present when these vehicles operate in normal driving conditions. A proper measure of damages then is the purchase price. Alternately, Plaintiffs

would not have paid a diesel premium of $2,400, if proper disclosures had been made. Plaintiffs have also been injured because they have been unwittingly driving cars whose emissions systems from the outset are not what a reasonable consumer would expect. The injury can be monetized by using a conjoint analysis; and

b. Plaintiffs have been wrongfully deprived of their property in that the price for their vehicles was artificially inflated by deliberate acts of false statements, omissions and concealment and by Defendants' acts of racketeering.

285. 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. Alabama State Claims

### COUNT II

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

286. Plaintiffs (for purposes of all Alabama Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

287. Plaintiffs bring this Count on behalf of the Alabama Class members.

288. Plaintiffs and the Class members are "consumers" within the meaning of Ala. Code § 8-19-3(2).

289. Plaintiffs, the Class members, GM and Bosch are "persons" within the meaning of Ala. Code § 8-19-3(5).

290. The Affected Vehicles are "goods" within the meaning of Ala. Code § 8-19-3(3).

291. GM and Bosch were and are engaged in "trade or commerce" within the meaning of Ala. Code § 8-19-3(8).

292. 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.

293. On June 21, 2016, Plaintiffs made a demand of GM in satisfaction of Ala. Code § 8-19-3. And on April 5, 2018, Plaintiffs made a demand of Bosch in satisfaction of Ala. Code § 8-19-3.

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

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

296. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

297. GM's and Bosch's deception, fraud, misrepresentation, concealment, suppression or omission of material facts were likely to and did in fact deceive reasonable consumers.

298. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

299. GM and Bosch knew or should have known that their conduct violated the Alabama DTPA.

300. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about their emissions systems manipulation because GM and Bosch:

a. Possessed exclusive knowledge that they 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/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 that contradicted these representations.

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

302. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

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

304. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

305. Plaintiffs and the Class seek monetary relief against GM in an amount to be determined at trial. Plaintiffs and the Class also seek punitive damages because GM and Bosch engaged in aggravated and outrageous conduct with an evil mind.

306. Plaintiffs also seek attorneys' fees and any other just and proper relief available.

## COUNT III

## FRAUDULENT CONCEALMENT
## (BASED ON ALABAMA LAW)

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

308. This claim is brought on behalf of the Alabama Class.

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

310. GM and Bosch knew these representations were false when made.

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

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

313. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or

is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

316. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and

consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

318. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities

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

319. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

320. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

321. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

322. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to

timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

323. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, and of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

324. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

325. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of

Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## C. Claims Brought on Behalf of the Arizona Class

### COUNT IV

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

326. Plaintiffs (for purposes of all Arizona Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

327. Plaintiffs bring this Count on behalf of the Arizona Class members.

328. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected

Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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.

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

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

331. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

332. GM's and Bosch's deception, fraud, misrepresentation, concealment, suppression or omission of material facts were likely to and did in fact deceive reasonable consumers.

333. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

334. GM and Bosch knew or should have known that its conduct violated the Arizona Consumer Fraud Act.

335. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

337. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

338. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

339. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

340. Plaintiffs and the Class seek monetary relief against GM and Bosch in an amount to be determined at trial. Plaintiffs and the Class also seek punitive damages because GM and Bosch engaged in aggravated and outrageous conduct with an evil mind.

341. Plaintiffs also seek attorneys' fees and any other just and proper relief available.

## COUNT V

## FRAUDULENT CONCEALMENT (BASED ON ARIZONA LAW)

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

343. This claim is brought on behalf of the Arizona Class.

344. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were

non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

345. GM and Bosch knew these representations were false when made.

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

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

348. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emissions, EPA-compliant

vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

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

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

353. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to

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

*reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

354. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

355. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

356. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

357. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

358. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, and of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

359. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

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

## D. Claims Brought on Behalf of the California Class

### COUNT VI

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

361. Plaintiffs (for purposes of all California Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

362. This claim is brought on behalf of the California Class members.

363. 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."

364. GM's and Bosch's conduct, as described herein, was and is in violation of the UCL. GM's and Bosch's 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 Class members that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles suffer from a defective emissions control system and emit unlawfully high levels of pollutants under normal driving conditions;

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

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

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

365. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

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

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

368. GM and Bosch knew or should have known that its conduct violated the UCL.

369. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

371. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

372. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

373. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

374. GM's and Bosch's misrepresentations and omissions alleged herein caused Plaintiffs and the other Class members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these 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 GM Clean Diesel engine systems that failed to comply with EPA and California emissions standards.

375. Accordingly, Plaintiffs and the other Class members have suffered injury in fact, including lost money or property, as a result of GM's and Bosch's misrepresentations and omissions.

376. Plaintiffs request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and members of the Class 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 VII

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

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

378. This claim is brought on behalf of the California Class.

379. 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."

380. GM and Bosch 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 GM, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

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

382. Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, as a result of GM's and Bosch's unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected Vehicles, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of GM and Bosch with respect to the functionality, reliability, environmental-friendliness, and lawfulness of the Affected Vehicles. GM's and Bosch's 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 GM Clean Diesel engine

systems that include defective emissions controls and a "Defeat Device". Had Plaintiffs and the other Class 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 Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

383. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of GM's and Bosch's business. GM's and Bosch's 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.

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

## COUNT VIII

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

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

386. This claim is brought on behalf of the California Class.

387. 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."

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

389. Plaintiffs and class members are "consumers" as defined in Cal. Civ. Code § 1761(d), and Plaintiffs, the other class members, and Defendants are "persons" as defined in Cal. Civ. Code § 1761(c).

390. As alleged above, Defendants made representations concerning the benefits, efficiency, performance, and safety features of the Cruze Diesel engine systems that were misleading.

391. In purchasing or leasing the Polluting Vehicles, Plaintiffs and the other Class members were deceived by Defendants' failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Polluting Vehicles were equipped with defective Cruze Diesel engine systems.

392. Defendants' conduct, as described hereinabove, was and is in violation of the CLRA. Defendants' 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.

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

394. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by Defendants' 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 form a clean diesel, as described above.

395. Plaintiffs and Class members reasonably relied upon Defendants' material omissions and false misrepresentations. They had no way of knowing that

Defendants' representations were false and gravely misleading. As alleged herein, Defendants engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel Defendants' deception on their own.

396. Defendants knew or should have known that its conduct violated the CLRA.

397. Defendants owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because Defendants:

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/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 that contradicted these representations.

398. Defendants 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 Class members, Defendants

had the duty to disclose not just the partial truth, but the entire truth. Further, Plaintiffs and the other Class members relied on Defendants' material omissions and representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

399. Plaintiffs and Class 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 Defendants, would have paid less, and/or would not have continued to drive their heavily Affected Vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiffs' and Class members' actions were justified. Defendants was in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

400. Defendants' conduct proximately caused injuries to Plaintiffs and the other Class members.

401. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain. These

injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

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

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

404. The facts concealed and omitted by Defendants from Plaintiffs and the other Class 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 Class 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.

405. Plaintiffs and the Class have provided Defendants with notice of its violations of the CLRA pursuant to Cal. Civ. Code § 1782(a).

406. Plaintiffs' and the other Class members' injuries were proximately caused by Defendants' unlawful and deceptive business practices.

407. Plaintiffs and the Class 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 Class member who is a "senior citizen."

## COUNT IX

## FRAUDULENT CONCEALMENT (BASED ON CALIFORNIA LAW)

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

409. This claim is brought on behalf of the California Class.

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

411. GM and Bosch knew these representations were false when made.

412. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate

than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

417. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want

to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

419. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

420. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

421. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

422. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

423. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

424. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, and of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

425. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

426. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## E. Claims Brought on Behalf of the Colorado Class

### COUNT X

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

427. Plaintiffs (for purposes of all Colorado Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

428. Plaintiffs bring this Count on behalf of the Colorado Class members.

429. 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).

430. GM and Bosch are "persons" under § 6-1-102(6) of the Colorado CPA, Col. Rev. Stat. § 6-1-101, *et seq*.

431. Plaintiffs and Colorado Class members are "consumers" for the purpose of Col. Rev. Stat. § 6-1-113(1)(a) who purchased or leased one or more Affected Vehicles.

432. In the course of GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, that the vehicles have a "Defeat Device," and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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, GM's and Bosch's 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 GM and Bosch fraudulently concealed the defective nature of the Affected Vehicles from consumers.

433. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the

NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

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

435. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

436. GM and Bosch knew or should have known that its conduct violated the Colorado CPA.

437. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

438. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

440. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

441. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

442. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

443. Pursuant to Col. Rev. Stat. § 6-1-113, Plaintiffs and the Class seek monetary relief against GM and Bosch 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 Plaintiffs and each Class member.

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

## COUNT XI

## FRAUDULENT CONCEALMENT
## (BASED ON COLORADO LAW)

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

446. This claim is brought on behalf of the Colorado Class.

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

448. GM and Bosch knew these representations were false when made.

449. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-

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

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

454. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not

want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

456. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

457. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

458. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

459. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

460. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

461. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

462. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

463. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## F. Claims Brought on Behalf of the Connecticut Class

### COUNT XII

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

464. Plaintiffs (for purposes of all Connecticut Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

465. Plaintiffs bring this Count on behalf of the Connecticut Class members.

466. Plaintiffs and GM and Bosch are each "persons" as defined by Conn. Gen. Stat. Ann. § 42-110a(3).

467. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more

pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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 GM and Bosch fraudulently concealed the defective nature of the Affected Vehicles from consumers.

468. GM and Bosch have 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.

469. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during

normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

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

471. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

472. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

473. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

474. GM and Bosch knew or should have known that its conduct violated the Connecticut UTPA.

475. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

477. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

478. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

479. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

480. Plaintiffs and the other Class members sustained damages as a result of GM's and Bosch's unlawful acts, and are therefore entitled to damages and other relief as provided under the Connecticut UTPA.

481. Plaintiffs also seek court costs and attorneys' fees as a result of GM's and Bosch's 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 XIII

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

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

483. Plaintiffs bring this Count on behalf of the Connecticut Class.

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

485. GM and Bosch knew these representations were false when made.

486. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-

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

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

491. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not

want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

493. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

494. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

495. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

496. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

497. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

498. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

499. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

500. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## G. Claims Brought on Behalf of the Delaware Class

### COUNT XIV

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

501. Plaintiffs (for purposes of all Delaware Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

502. Plaintiffs bring this Count on behalf of the Delaware Class members.

503. GM and Bosch are "persons" within the meaning of 6 Del. Code § 2511(7).

504. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than

gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch have 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.

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

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

507. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

508. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

509. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

510. GM and Bosch knew or should have known that its conduct violated the Delaware Consumer Fraud Act.

511. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

513. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

514. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

515. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

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

517. GM and Bosch engaged in gross, oppressive, or aggravated conduct justifying the imposition of punitive damages.

## COUNT XV

## FRAUDULENT CONCEALMENT (BASED ON DELAWARE LAW)

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

519. This claim is brought on behalf of the Delaware Class.

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

campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

521. GM and Bosch knew these representations were false when made.

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

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

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

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

526. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their

own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

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

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

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

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

530. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

531. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

532. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

533. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

534. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class

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.

535. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

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

## H. Claims Brought on Behalf of the Florida Class

### COUNT XVI

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

537. Plaintiffs (for purposes of all Florida Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

538. Plaintiffs bring this Count on behalf of the Florida Class members.

539. Plaintiffs and the Class are "consumers" within the meaning of Florida Unfair and Deceptive Trade Practices Act ("Florida UDTPA"), Fla. Stat. § 501.203(7).

540. GM and Bosch engaged in "trade or commerce" within the meaning of the Fla. Stat. § 501.203(8).

541. 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). GM and Bosch participated in unfair and deceptive trade practices that violated the Florida UDTPA as described herein. In the course of GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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). GM's and Bosch's conduct offends

established public policy, is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and is likely to mislead consumers.

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

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

544. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

545. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

546. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

547. GM and Bosch knew or should have known that its conduct violated the Florida UDTPA.

548. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

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

550. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

551. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

552. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

553. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

## COUNT XVII

## FRAUDULENT CONCEALMENT
## (BASED ON FLORIDA LAW)

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

555. Plaintiffs bring this Count on behalf of the Florida Class.

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

557. GM and Bosch knew these representations were false when made.

558. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-

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

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

563. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not

want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

565. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

566. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

567. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

568. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

569. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

570. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

571. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

572. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## I. Claims Brought on Behalf of the Georgia Class

### COUNT XVIII

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

573. Plaintiffs (for purposes of all Georgia Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

574. Plaintiffs intend to assert a claim under the Georgia Fair Business Practices Act ("Georgia FBPA") which 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).

575. On June 21, 2016, Plaintiffs made a demand in satisfaction of Ga. Code. Ann. § 10-1-399. And on April 5, 2018, Plaintiffs made a demand of Bosch in satisfaction of Ga. Code. Ann. § 10-1-399.

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

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

578. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

579. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

580. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

581. GM and Bosch knew or should have known that its conduct violated the Georgia FBPA.

582. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

they were purchasing were reduced emission vehicles, efficient, and free from defects.

584. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

585. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

586. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

587. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

## COUNT XIX

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

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

589. This claim is brought on behalf of the Georgia Class.

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

591. GM and Bosch knew these representations were false when made.

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

593. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and

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

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

595. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only

to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

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

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

598. GM's and Bosch's false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations

regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

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

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

600. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

601. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

602. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

603. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

604. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

605. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

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

## J. Claims Brought on Behalf of the Idaho Class

### COUNT XX

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

607. Plaintiffs (for purposes of all Idaho Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

608. Plaintiffs bring this Count on behalf of the Idaho Class members.

609. GM and Bosch are "persons" under the Idaho Consumer Protection Act ("Idaho CPA"), Idaho Civ. Code § 48-602(1).

610. GM's and Bosch's acts or practices as set forth above occurred in the conduct of "trade" or "commerce" under Idaho Civ. Code § 48-602(2).

611. 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. GM and Bosch participated in misleading, false, or deceptive and unconscionable acts that violated the Idaho CPA. In the course of GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer

would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

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

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

614. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

615. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

616. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

617. GM and Bosch knew or should have known that its conduct violated the Idaho CPA.

618. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

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

620. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

621. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

622. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

623. Plaintiffs also seek attorneys' fees and any other just and proper relief available under the Idaho CPA.

624. Plaintiffs also seek punitive damages against GM and Bosch because GM's and Bosch's conduct evidences an extreme deviation from reasonable standards. GM's and Bosch's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

## COUNT XXI

## FRAUDULENT CONCEALMENT (BASED ON IDAHO LAW)

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

626. This claim is brought on behalf of the Idaho Class.

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

628. GM and Bosch knew these representations were false when made.

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

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

631. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or

is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

634. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the

public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

636. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities

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

637. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

638. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

639. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

640. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to

timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

641. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

642. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

643. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of

Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## K. Claims Brought on Behalf of the Illinois Class

### COUNT XXII

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

644. Plaintiffs (for purposes of all Illinois Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

645. This claim is brought on behalf of the Illinois Class members.

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

647. Plaintiffs and the Class members are "consumers" as that term is defined in 815 ILCS 505/1(e).

648. 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.

649. In the course of GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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.

650. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the

Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

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

652. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

653. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

654. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

655. GM and Bosch knew or should have known that its conduct violated the Illinois CFA.

656. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

658. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

659. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

660. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

661. Pursuant to 815 ILCS 505/10a(a), Plaintiffs and the Class members seek monetary relief against GM and Bosch in the amount of actual damages, as well as punitive damages because GM and Bosch acted with fraud and/or malice and/or was grossly negligent.

662. Plaintiffs also seek punitive damages, attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1, *et seq*. A copy of this Complaint has been mailed to the Attorney General of the State of Illinois in accordance with 815 ILCS 505/10a(d).

## COUNT XXIII

## FRAUDULENT CONCEALMENT
## (BASED ON ILLINOIS LAW)

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

664. This claim is brought on behalf of the Illinois Class.

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

666. GM and Bosch knew these representations were false when made.

667. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-

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

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

672. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not

want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

674. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

675. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

676. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

677. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

678. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

679. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

680. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

681. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## L. Claims Brought on Behalf of the Kentucky Class

### COUNT XXIV

### VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT (KY. REV. STAT. §§ 367.110, *ET SEQ.*)

682. Plaintiffs (for purposes of all Kentucky Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

683. Plaintiffs bring this Count on behalf of the Kentucky Class members.

684. GM, Plaintiffs, and the Kentucky Class are "persons" within the meaning of the Ky. Rev. Stat. § 367.110(1).

685. GM and Bosch engaged in "trade" or "commerce" within the meaning of Ky. Rev. Stat. § 367.110(2).

686. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising

campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch engaged in deceptive business practices prohibited by the Kentucky CPA.

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

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

689. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

690. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

691. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

692. GM and Bosch knew or should have known that its conduct violated the Kentucky CPA.

693. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

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

695. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

696. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

697. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

698. Pursuant to Ky. Rev. Stat. Ann. § 367.220, Plaintiffs and the Class 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 XXV

## FRAUD BY OMISSION
## (BASED ON KENTUCKY LAW)

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

700. This claim is brought on behalf of the Kentucky Class.

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

702. GM and Bosch knew these representations were false when made.

703. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable

consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

708. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want

to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

710. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

711. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

712. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

713. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

714. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

715. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

716. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

717. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## M. Claims Brought on Behalf of the Maryland Class

### COUNT XXVI

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

718. Plaintiffs (for purposes of all Maryland Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

719. This claim is brought only on behalf of members of the Maryland Class members.

720. GM, Plaintiffs, and the Maryland Class are "persons" within the meaning of Md. Code Com. Law § 13-101(h).

721. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md. Com. Law Code § 13-303. In the course of GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, that the vehicles have "Defeat Device," and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch engaged in unfair and deceptive trade practices. GM's and Bosch's 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.

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

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

724. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

725. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

726. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

727. GM and Bosch knew or should have known that its conduct violated the Maryland CPA.

728. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

730. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

731. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

732. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

733. Pursuant to Md. Code Com. Law § 13-408, Plaintiffs and the Maryland Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

## COUNT XXVII

## FRAUDULENT CONCEALMENT (BASED ON MARYLAND LAW)

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

735. This claim is brought on behalf of the Maryland Class.

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

737. GM and Bosch knew these representations were false when made.

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

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

740. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the

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

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

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

743. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean

air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

745. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to

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

746. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

747. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

748. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

749. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are

diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

750. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

751. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

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

## N. Claims Brought on Behalf of the Massachusetts Class

### COUNT XXVIII

### VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION ACT (MASS. GEN. LAWS CH. 93A)

753. Plaintiffs (for purposes of all Massachusetts Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

754. Plaintiffs assert a claim under the Massachusetts Consumer Protection Act ("MCPA"), which makes it unlawful to engage in any "[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce." Mass. Gen. Laws Ch. 93A, § 2(1).

755. On June 21, 2016, Plaintiffs made a demand of GM in satisfaction of Mass. Gen. Laws Ch. 93A, § 9(3). And on April 5, 2018, Plaintiffs made a demand of Bosch in satisfaction of Mass. Gen. Laws Ch. 93A, § 9(3).

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

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

758. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

759. GM's and Bosch's deception, fraud, misrepresentation, concealment, suppression or omission of material facts were likely to and did in fact deceive reasonable consumers.

760. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

761. GM and Bosch knew or should have known that their conduct violated the MCPA.

762. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about their emissions systems manipulation because GM and Bosch:

a. Possessed exclusive knowledge that they 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/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 that contradicted these representations.

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

GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

764. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

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

766. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

767. Plaintiffs and the Class seek monetary relief against GM in an amount to be determined at trial. Plaintiffs and the Class also seek punitive damages because GM and Bosch engaged in aggravated and outrageous conduct with an evil mind.

768. Plaintiffs also seek attorneys' fees and any other just and proper relief available.

## COUNT XXIX

## FRAUDULENT CONCEALMENT
## (BASED ON MASSACHUSETTS LAW)

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

770. This claim is brought on behalf of the Massachusetts Class.

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

772. GM and Bosch knew these representations were false when made.

773. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-

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

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

778. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want

to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

780. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

781. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

782. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

783. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

784. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

785. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

786. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

787. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## O. Claims Brought on Behalf of the Michigan Class

### COUNT XXX

### VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT (MICH. COMP. LAWS § 445.903, *ET SEQ.*)

788. Plaintiffs (for purposes of all Michigan Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

789. This claim is brought on behalf of the Michigan Class members.

790. Plaintiffs and the Michigan Class members were "person[s]" within the meaning of Mich. Comp. Laws § 445.902(1)(d).

791. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or 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; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; failing to

reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

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

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

794. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

795. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

796. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

797. GM and Bosch knew or should have known that its conduct violated the Michigan CPA.

798. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

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

800. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

801. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

802. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

803. Plaintiffs 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 Plaintiffs and each Michigan Class member; reasonable

attorneys' fees; and any other just and proper relief available under Mich. Comp. Laws § 445.911.

804. Plaintiffs also seek punitive damages against GM and Bosch because it carried out despicable conduct with willful and conscious disregard of the rights of others. GM's and Bosch's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

## COUNT XXXI

## FRAUDULENT CONCEALMENT (BASED ON MICHIGAN LAW)

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

806. This claim is brought on behalf of the Michigan Class.

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

808. GM and Bosch knew these representations were false when made.

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

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

811. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emissions, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the

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

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

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

814. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean

air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

816. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to

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

817. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

818. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

819. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

820. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are

diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

821. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

822. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

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

## P. Claims Brought on Behalf of the Minnesota Class

### COUNT XXXII

### VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT (MINN. STAT. § 325F.68, *ET SEQ.*)

824. Plaintiffs (for purposes of all Minnesota Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

825. This claim is brought on behalf of the Minnesota Class members.

826. The Affected Vehicles constitute "merchandise" within the meaning of Minn. Stat. § 325F.68(2).

827. 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 GM’s and Bosch’s business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM’s and Bosch’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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.

828. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM’s and Bosch’s failure to disclose that the

NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

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

830. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

831. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

832. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

833. GM and Bosch knew or should have known that its conduct violated the Minnesota CFA.

834. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

836. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

837. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

838. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

839. Pursuant to Minn. Stat. § 8.31(3a), Plaintiffs and the Minnesota Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA.

840. Plaintiffs also seek punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing evidence that GM's and Bosch's acts show deliberate disregard for the rights of others.

## COUNT XXXIII

## FRAUDULENT CONCEALMENT
## (BASED ON MINNESOTA LAW)

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

842. This claim is brought on behalf of the Minnesota Class.

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

844. GM and Bosch knew these representations were false when made.

845. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-

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

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

850. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want

to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

852. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

853. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

854. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

855. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

856. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

857. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

858. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

859. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## Q. Claims Brought on Behalf of the Missouri Class

### COUNT XXXIV

### VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT (MO. REV. STAT. §§ 407.010, *ET SEQ.*)

860. Plaintiffs (for purposes of all Missouri Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

861. Plaintiffs bring this Count on behalf of the Missouri Class members.

862. GM, Plaintiffs and the Missouri Class are "persons" within the meaning of Mo. Rev. Stat. § 407.010(5).

863. GM and Bosch engaged in "trade" or "commerce" in the State of Missouri within the meaning of Mo. Rev. Stat. § 407.010(7).

864. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than

gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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. GM's and Bosch's conduct offends public policy; is unethical, oppressive, or unscrupulous; and presents a risk of, or causes, substantial injury to consumers.

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

866. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and

Class members did not, and could not, unravel GM's and Bosch's deception on their own.

867. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

868. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

869. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

870. GM and Bosch knew or should have known that its conduct violated the Missouri MPA.

871. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

873. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

874. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

875. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

876. GM and Bosch are liable to Plaintiffs and the Missouri Class 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 XXXV

## FRAUDULENT CONCEALMENT (BASED ON MISSOURI LAW)

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

878. This claim is brought on behalf of the Missouri Class.

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

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

880. GM and Bosch knew these representations were false when made.

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

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

883. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emissions, EPA-compliant

vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

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

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

888. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to

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

*reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

889. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

890. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

891. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

892. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

893. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

894. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

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

## R. Claims Brought on Behalf of the Montana Class

### COUNT XXXVI

### VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973 (MONT. CODE ANN. § 30-14-101, *ET SEQ.*)

896. Plaintiffs (for purposes of all Montana Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

897. This claim is brought only on behalf of the Montana Class members.

898. GM, Plaintiffs and the Montana Class are "persons" within the meaning of Mont. Code Ann. § 30-14-102(6).

899. Montana Class members are "consumer[s]" under Mont. Code Ann. § 30-14-102(1).

900. The sale or lease of the Affected Vehicles to Montana Class members occurred within "trade and commerce" within the meaning of Mont. Code Ann. § 30-14-102(8), and GM and Bosch committed deceptive and unfair acts in the conduct of "trade and commerce" as defined in that statutory section.

901. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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.

902. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during

normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

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

904. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

905. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

906. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

907. GM and Bosch knew or should have known that its conduct violated the Montana CPA.

908. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

910. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

911. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

912. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

913. Because GM's and Bosch's unlawful methods, acts, and practices have caused Plaintiffs and Montana Class members to suffer an ascertainable loss of money and property, Plaintiffs and the Class seek from GM and Bosch 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 XXXVII

## FRAUD BY CONCEALMENT
## (BASED ON MONTANA LAW)

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

915. This claim is brought on behalf of the Montana Class.

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

917. GM and Bosch knew these representations were false when made.

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

919. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that these Affected Vehicles were defective, employed a "Defeat Device," and

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

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

921. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only

to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

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

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

924. GM's and Bosch's false representations were material to consumers, because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations

regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

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

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

926. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

927. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

928. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

929. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

930. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

931. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

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

## S. Claims Brought on Behalf of the Nevada Class

### COUNT XXXVIII

### VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT (NEV. REV. STAT. §§ 598.0903, *ET SEQ.*)

933. Plaintiffs (for purposes of all Nevada Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

934. Plaintiffs bring this Count on behalf of the Nevada Class members.

935. 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, GM and Bosch have violated the Nevada DTPA by knowingly representing that the Affected Vehicles have uses and benefits which

they do not have; representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising the 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.

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

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

938. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

939. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

940. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

941. GM and Bosch knew or should have known that its conduct violated the Nevada DTPA.

942. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

943. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions,

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

944. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

945. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

946. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

947. Accordingly, Plaintiffs and the Nevada Class seek their actual damages, punitive damages, costs of Court, attorney's fees, and all other

appropriate and available remedies under the Nevada Deceptive Trade Practices Act. Nev. Rev. Stat. § 41.600.

## COUNT XXXIX

## FRAUDULENT CONCEALMENT (BASED ON NEVADA LAW)

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

949. This claim is brought on behalf of the Nevada Class.

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

951. GM and Bosch knew these representations were false when made.

952. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable

consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

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

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

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

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

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

957. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want

to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

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

959. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

960. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

961. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

962. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

963. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

964. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

965. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

966. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an

assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## T. Claims Brought on Behalf of the New Jersey Class

### COUNT XL

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

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

968. Plaintiffs bring this Count on behalf of New Jersey Class members.

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

970. In the course of GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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, GM's and Bosch's 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 GM and Bosch fraudulently concealed the defective nature of the Affected Vehicles from consumers.

971. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

972. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

973. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

974. GM and Bosch knew or should have known that its conduct violated the New Jersey CFA.

975. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

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

977. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

978. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

979. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

980. 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 XLI

## FRAUDULENT CONCEALMENT (BASED ON NEW JERSEY LAW)

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

982. Plaintiffs bring this Count on behalf of the New Jersey Class.

983. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a

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

984. GM and Bosch knew these representations were false when made.

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

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

GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

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

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

989. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class

members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

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

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

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

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

993. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

994. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

995. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

996. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

997. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, and of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and

Class 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.

998. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

999. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's 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 New York Class

### COUNT XLII

### VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (N.Y. GEN. BUS. LAW § 349)

1000. Plaintiffs (for purposes of all New York Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1001. This claim is brought on behalf of the New York Class members.

1002. 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 GM's and Bosch's business, it willfully failed to disclose and

actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. The challenged act or practice was "consumer-oriented;" (2) that the act or practice was misleading in a material way; and (3) Plaintiffs suffered injury as a result of the deceptive act or practice. Accordingly, GM and Bosch have violated New York General Business Law § 349.

1003. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1004. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and

Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1005. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1006. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1007. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1008. GM and Bosch knew or should have known that its conduct violated New York General Business Law § 349.

1009. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1010. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1011. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1012. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1013. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1014. Pursuant to N.Y. Gen. Bus. Law § 349(h), Plaintiffs and each Class member may recover actual damages, in addition to three times actual damages up to $1,000 for GM's and Bosch's willful and knowing violation of N.Y. Gen. Bus. Law § 349.

## COUNT XLIII

## VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350 (N.Y. GEN. BUS. LAW § 350)

1015. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1016. This claim is brought on behalf of the New York Class.

1017. 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.

1018. GM and Bosch 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 GM, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

1019. GM and Bosch have violated N.Y. Gen. Bus. Law § 350 because the misrepresentations and omissions alleged herein, including, but not limited to, GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1020. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1021. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1022. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1023. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1024. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1025. GM and Bosch knew or should have known that its conduct violated New York General Business Law § 350.

1026. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1027. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1028. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1029. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1030. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1031. Plaintiffs and the other Class members are entitled to recover their actual damages or $500, whichever is greater. Because GM and Bosch acted willfully or knowingly, Plaintiffs and the other Class members are entitled to recover three times actual damages, up to $10,000.

## COUNT XLIV

## FRAUDULENT CONCEALMENT (BASED ON NEW YORK LAW)

1032. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1033. This claim is brought on behalf of the New York Class.

1034. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1035. GM and Bosch knew these representations were false when made.

1036. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1037. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1038. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had

defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1039. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1040. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1041. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs

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

1042. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1043. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as

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

1044. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply

with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1045. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1046. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1047. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine

system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1048. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1049. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1050. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch

made to them, in order to enrich GM. GM's and Bosch's 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 North Carolina Class

### COUNT XLV

### VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE ACTS AND PRACTICES ACT (N.C. GEN. STAT. §§ 75-1.1, *ET SEQ.*)

1051. Plaintiffs (for purposes of all North Carolina Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

1052. Plaintiffs bring this Count on behalf of the North Carolina Class members.

1053. GM and Bosch engaged in "commerce" within the meaning of N.C. Gen. Stat. § 75-1.1(b).

1054. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and

Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch engaged in unfair and deceptive trade practices because (1) had the capacity or tendency to deceive, (2) offends public policy, (3) is immoral, unethical, oppressive or unscrupulous, or (4) causes substantial injury to consumers.

1055. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1056. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1057. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1058. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1059. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1060. GM and Bosch knew or should have known that its conduct violated the North Carolina UDTPA.

1061. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1062. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions,

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1063. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1064. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1065. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1066. Plaintiffs seek an order for treble their actual damages, costs of Court, attorney's fees, and any other just and proper relief available under the North Carolina Act, N.C. Gen. Stat. § 75-16.

1067. Plaintiffs also seek punitive damages against GM and Bosch because GM's and Bosch's conduct was malicious, willful, reckless, wanton, fraudulent and in bad faith.

## COUNT XLVI

## FRAUDULENT CONCEALMENT (BASED ON NORTH CAROLINA LAW)

1068. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1069. This claim is brought on behalf of the North Carolina Class.

1070. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1071. GM and Bosch knew these representations were false when made.

1072. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1073. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1074. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or

is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1075. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1076. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1077. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and

consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1078. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1079. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities

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

1080. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1081. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1082. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1083. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to

timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1084. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1085. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1086. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of

Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's 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 Ohio Class

### COUNT XLVII

### VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT (OHIO REV. CODE §§ 1345.01, *ET SEQ.*)

1087. Plaintiffs (for purposes of all Ohio Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1088. This claim is brought on behalf of the Ohio Class members.

1089. Plaintiffs and the other Ohio Class members are "consumers" as defined by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (Ohio CSPA). GM and Bosch are "suppliers" as defined by the OCSPA. Plaintiffs' and the other Ohio Class members' purchases or leases of Affected Vehicles were "consumer transactions" as defined by the Ohio CSPA.

1090. The Ohio Attorney General has made available for public inspection prior state court decisions which have held that the acts and omissions of GM and Bosch in this Complaint, including but not limited to the failure to honor both implied warranties and express warranties, the making and distribution of false, deceptive, and/or misleading representations, and the concealment and/or non-

disclosure of a dangerous defect, constitute deceptive sales practices in violation of the OCSPA. These cases include, but are not limited to, the following:

a. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);

b. *State ex rel. Betty D. Montgomery v. Volkswagen Motor Co.* (OPIF #10002123);

c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF #10002025);

d. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);

e. *Borror v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);

f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);

g. *Mark J. Craw Volkswagen, et al. v. Joseph Airport Toyota, Inc.* (OPIF #10001586);

h. *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF #10000304);

i. *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);

j. *Khouri v. Don Lewis* (OPIF #100001995);

k. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF #10001326);

l. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524); and

m. *Brown v. Spears* (OPIF #10000403).

1091. The Ohio CSPA, Ohio Rev. Code § 1345.02, broadly prohibits unfair or deceptive acts or practices in connection with a consumer transaction.

Specifically, and without limitation of the broad prohibition, the Act prohibits suppliers from representing (i) that goods have characteristics or uses or benefits which they do not have; (ii) that their goods are of a particular quality or grade they are not; and (iii) the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not. *Id.* GM's and Bosch's conduct as alleged above and below constitutes unfair and/or deceptive consumer sales practices in violation of Ohio Rev. Code § 1345.02. In the course of GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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; and supplying the Affected Vehicles based on misrepresentations; and otherwise engaging in conduct likely to deceive.

1092. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1093. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1094. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1095. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1096. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1097. GM and Bosch knew or should have known that its conduct violated the Ohio CSPA.

1098. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1099. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on

GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1100. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1101. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1102. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1103. Plaintiffs and the Class sustained damages as a result of GM's and Bosch's unlawful acts and are, therefore, entitled to damages and other relief as provided under the Ohio CSPA.

1104. Plaintiffs also seek court costs and attorneys' fees as a result of GM's and Bosch's violations of the OCSPA as provided in Ohio Rev. Code § 1345.09.

## COUNT XLVIII

## FRAUDULENT CONCEALMENT
## (BASED ON OHIO LAW)

1105. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1106. This claim is brought on behalf of the Ohio Class.

1107. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1108. GM and Bosch knew these representations were false when made.

1109. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-

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

1110. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1111. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1112. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1113. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1114. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1115. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1116. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of the vehicles, their actual philosophy with respect to compliance with federal and state clean air laws

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

1117. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1118. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1119. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1120. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to

the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1121. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1122. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1123. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's 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 Pennsylvania Class

### COUNT XLIX

### VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (73 P.S. §§ 201-1, *ET SEQ.*)

1124. Plaintiffs (for purposes of all Pennsylvania Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

1125. Plaintiffs bring this Count on behalf of the Pennsylvania Class members.

1126. Plaintiffs purchased or leased their Affected Vehicle primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

1127. All of the acts complained of herein were perpetrated by GM and Bosch in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

1128. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch engaged in deceptive business practices prohibited by the Pennsylvania CPL, 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, 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.

1129. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the

Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1130. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1131. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1132. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1133. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1134. GM and Bosch knew or should have known that its conduct violated the Pennsylvania CPL.

1135. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1136. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1137. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1138. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1139. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1140. GM and Bosch are liable to Plaintiffs and the Pennsylvania Class for treble their actual damages or $100, whichever is greater, and attorneys' fees and costs. 73 P.S. § 201-9.2(a). Plaintiffs and the Pennsylvania Class are also entitled to an award of punitive damages given that GM's and Bosch's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

## COUNT L

## FRAUDULENT CONCEALMENT
## (BASED ON PENNSYLVANIA LAW)

1141. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1142. This claim is brought on behalf of the Pennsylvania Class.

1143. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1144. GM and Bosch knew these representations were false when made.

1145. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1146. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device,"

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

1147. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1148. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1149. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1150. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1151. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's

customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1152. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of the vehicles, their actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Class members, GM and Bosch had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and

Class members. Whether a manufacturer's products pollute, comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. GM and Bosch represented to Plaintiffs and Class members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1153. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1154. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1155. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1156. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1157. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions

controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1158. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1159. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's 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 Tennessee Class

### COUNT LI

### VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT (TENN. CODE ANN. §§ 47-18-101, *ET SEQ.*)

1160. Plaintiffs (for purposes of all Tennessee Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

1161. Plaintiffs bring this Count on behalf of the Tennessee Class members.

1162. Plaintiffs and the Tennessee Class are "natural persons" and "consumers" within the meaning of Tenn. Code Ann. § 47-18-103(2).

1163. GM and Bosch are "persons" within the meaning of Tenn. Code Ann. § 47-18-103(2).

1164. GM's and Bosch's conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of Tenn. Code Ann. § 47-18-103(19).

1165. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's

advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch violated the Tennessee CPA by engaging in unfair or deceptive acts, including representing that the Affected Vehicles have characteristics or benefits that they did not have; representing that the Affected Vehicles are of a particular standard, quality, or grade when they are of another; advertising the Affected Vehicles with intent not to sell them as advertised; and engaging in acts or practices that are deceptive to consumers.

1166. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1167. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1168. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1169. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1170. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1171. GM and Bosch knew or should have known that its conduct violated the Tennessee CPA.

1172. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1173. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1174. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1175. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1176. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1177. Pursuant to Tenn. Code § 47-18-109(a), Plaintiffs and the Tennessee Class seek monetary relief against GM and Bosch measured as actual damages in an amount to be determined at trial, treble damages as a result of GM's and Bosch's willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

## COUNT LII

## FRAUD BY CONCEALMENT
## (BASED ON TENNESSEE LAW)

1178. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1179. This claim is brought on behalf of the Tennessee Class.

1180. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1181. GM and Bosch knew these representations were false when made.

1182. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1183. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1184. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had

defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1185. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1186. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1187. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs

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

1188. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1189. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as

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

1190. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply

with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1191. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1192. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1193. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine

system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1194. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1195. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1196. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch

made to them, in order to enrich GM. GM's and Bosch's 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 Texas Class

### COUNT LIII

### VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT (TEX. BUS. & COM. CODE §§ 17.41, *ET SEQ.*)

1197. Plaintiffs (for purposes of all Texas Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1198. Plaintiffs asserts a claim under the Texas Deceptive Trade Practices Act ("TDTPA"), which makes it unlawful to commit "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Tex. Bus. & Com. Code § 17.46.

1199. On June 21, 2016, Plaintiffs made a demand of GM in satisfaction of Tex. Bus. & Com. Code § 17.45(2). And on April 5, 2018, Plaintiffs made a demand of Bosch in satisfaction of Tex. Bus. & Com. Code § 17.45(2).

1200. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the

Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1201. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1202. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1203. GM's and Bosch's deception, fraud, misrepresentation, concealment, suppression or omission of material facts were likely to and did in fact deceive reasonable consumers.

1204. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1205. GM and Bosch knew or should have known that their conduct violated the TDTPA.

1206. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about their emissions systems manipulation because GM and Bosch:

a. Possessed exclusive knowledge that they 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/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 that contradicted these representations.

1207. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1208. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1209. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of GM's and Bosch's misrepresentations and omissions.

1210. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1211. Plaintiffs and the Class seek monetary relief against GM in an amount to be determined at trial. Plaintiffs and the Class also seek punitive damages because GM and Bosch engaged in aggravated and outrageous conduct with an evil mind.

1212. Plaintiffs also seek attorneys' fees and any other just and proper relief available.

## COUNT LIV

## FRAUD BY CONCEALMENT
## (BASED ON TEXAS LAW)

1213. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1214. This claim is brought on behalf of the Texas Class.

1215. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch 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. GM and Bosch knew these representations were false when made.

1217. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1218. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the

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

1219. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1220. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1221. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1222. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1223. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's

customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1224. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of the vehicles, their actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Class members, GM and Bosch had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and

Class members. Whether a manufacturer's products pollute, comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. GM and Bosch represented to Plaintiffs and Class members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1225. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1226. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1227. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1228. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1229. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions

controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1230. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1231. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's 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 Utah Class

### COUNT LV

### VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT (UTAH CODE ANN. §§ 13-11-1, *ET SEQ.*)

1232. Plaintiffs (for purposes of all Utah Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

1233. Plaintiffs bring this Count on behalf of the Utah Class members.

1234. GM and Bosch are "suppliers" under the Utah Consumer Sales Practices Act ("Utah CSPA"), Utah Code Ann. § 13-11-3.

1235. Plaintiffs and the Class members are "persons" under Utah Code Ann. § 13-11-3.

1236. Sales of the Affected Vehicles to Plaintiffs and the Class were "consumer transactions" within the meaning of Utah Code Ann. § 13-11-3.

1237. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light

of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch 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. GM and Bosch 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.

1238. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1239. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM

and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1240. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1241. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1242. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1243. GM and Bosch knew or should have known that its conduct violated the Utah CSPA.

1244. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1245. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1246. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1247. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1248. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1249. Pursuant to Utah Code Ann. § 13-11-4, Plaintiffs and the Class seek monetary relief against GM and Bosch 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 Plaintiffs and each Utah Class member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA. A copy of this Complaint has been mailed to the Attorney General of the State of Utah in accordance with Utah Code Ann. § 13-11-21(2).

## COUNT LVI

## FRAUDULENT CONCEALMENT (BASED ON UTAH LAW)

1250. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1251. This claim is brought on behalf of the Utah Class.

1252. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a

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

1253. GM and Bosch knew these representations were false when made.

1254. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1255. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on

GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1256. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1257. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1258. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class

members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1259. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1260. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1261. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of the vehicles, their actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Class members, GM and Bosch had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products pollute, comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material

concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. GM and Bosch represented to Plaintiffs and Class members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1262. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1263. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1264. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1265. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1266. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class

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.

1267. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1268. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## BB. Claims Brought on Behalf of the Virginia Class

### COUNT LVII

### VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT (VA. CODE ANN. §§ 59.1-196, *ET SEQ.*)

1269. Plaintiffs (for purposes of all Virginia Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

1270. This claim is brought on behalf of the Virginia Class members.

1271. GM and Bosch are "persons" as defined by Va. Code Ann. § 59.1-198. The transactions between Plaintiffs and the other Class members on the one hand and GM and Bosch on the other, leading to the purchase or lease of the

Affected Vehicles by Plaintiffs and the other Class 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.

1272. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch engaged in acts and practices violating Va. Code Ann. § 59.1-200(A), 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 deception, fraud, false pretense, false promise or misrepresentations and conduct likely to deceive.

1273. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1274. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1275. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1276. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1277. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1278. GM and Bosch knew or should have known that its conduct violated the Virginia CPA.

1279. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1280. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions,

and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1281. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1282. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1283. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1284. Pursuant to Va. Code Ann. § 59.1-204, Plaintiffs and the Class seek monetary relief against GM and Bosch 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 Plaintiffs and each Class member. Because GM's and Bosch's conduct was committed willfully and knowingly, Plaintiffs are entitled to recover, for each Plaintiffs and each Class member, the greater of (a) three times actual damages or (b) $1,000.

1285. Plaintiffs also seek punitive damages, and attorneys' fees, and any other just and proper relief available under General Business Law § 59.1-204, *et seq*.

**COUNT LVIII**

**FRAUD BY CONCEALMENT**
**(UNDER VIRGINIA LAW)**

1286. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1287. This claim is brought on behalf of the Virginia Class.

1288. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with

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

1289. GM and Bosch knew these representations were false when made.

1290. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1291. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1292. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel

engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1293. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1294. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1295. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized

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

1296. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1297. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably

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

1298. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1299. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1300. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1301. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are

diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1302. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1303. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1304. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's 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 Washington Class

### COUNT LIX

### VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT (WASH. REV. CODE ANN. §§ 19.86.010, *ET SEQ.*)

1305. Plaintiffs (for purposes of all Washington Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1306. Plaintiffs bring this Count on behalf of the Washington Class members.

1307. GM, Plaintiffs, and the Washington Class are a "person" under Wash. Rev. Code Ann. § 19.86.010(1) ("Washington CPA").

1308. GM and Bosch engaged in "trade" or "commerce" under Wash. Rev. Code Ann. § 19.86.010(2).

1309. The Washington Consumer Protection Act ("Washington CPA") broadly prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Wash. Rev. Code. Wash.

Ann. § 19.96.010. In the course of GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch engaged in unfair and deceptive business practices prohibited by the Washington CPA. GM's and Bosch's 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. GM's and Bosch's conduct is deceptive because it has the capacity or tendency to deceive.

1310. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1311. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1312. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1313. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1314. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1315. GM and Bosch knew or should have known that its conduct violated the Washington CPA.

1316. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1317. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1318. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1319. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1320. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1321. Pursuant to Wash. Rev. Code § 19.86.095, Plaintiffs will serve the Washington Attorney General with a copy of this complaint as Plaintiffs and the Washington Class members seek injunctive relief.

1322. GM and Bosch are liable to Plaintiffs and the Class 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 LX

## FRAUDULENT CONCEALMENT (BASED ON WASHINGTON LAW)

1323. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1324. This claim is brought on behalf of the Washington Class.

1325. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions,

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

1326. GM and Bosch knew these representations were false when made.

1327. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1328. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on

GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1329. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1330. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1331. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class

members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1332. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1333. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1334. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of the vehicles, their actual philosophy with respect to compliance with federal and state clean air laws and emissions regulations, and its actual practices with respect to the vehicles at issue. Having volunteered to provide information to Plaintiffs and Class members, GM and Bosch had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were material because they directly impact the value of the Affected Vehicles purchased or leased by Plaintiffs and Class members. Whether a manufacturer's products pollute, comply with federal and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material

concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. GM and Bosch represented to Plaintiffs and Class members that they were purchasing or leasing *reduced emissions* diesel vehicles, when in fact, they were purchasing or leasing defective, high emission, and unlawfully high emission vehicles.

1335. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1336. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1337. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1338. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1339. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class

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.

1340. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

## DD. Claims Brought on Behalf of the West Virginia Class

### COUNT LXI

### VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT (W. VA. CODE §§ 46A-1-101, *ET SEQ.*)

1341. Plaintiffs (for purposes of all West Virginia Class Counts) incorporate by reference all paragraphs as though fully set forth herein.

1342. Plaintiffs assert a claim under the West Virginia Consumer Credit and Protection Act ("West Virginia CCPA") which prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce …." W. Va. Code § 46A-6-104.

1343. On June 21, 2016, Plaintiffs made a demand of GM in satisfaction of W. VA. CODE § 46A-6-106(b). And on April 5, 2018, Plaintiffs made a demand of Bosch in satisfaction of W. VA. CODE § 46A-6-106(b).

1344. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose the NOx

reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1345. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1346. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1347. GM's and Bosch's deception, fraud, misrepresentation, concealment, suppression or omission of material facts were likely to and did in fact deceive reasonable consumers.

1348. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1349. GM and Bosch knew or should have known that their conduct violated the West Virginia CCPA.

1350. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about their emissions systems manipulation because GM and Bosch:

a. Possessed exclusive knowledge that they 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/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 that contradicted these representations.

1351. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1352. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1353. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain. These injuries are the direct and natural consequence of GM's and Bosch's misrepresentations and omissions.

1354. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1355. Plaintiffs and the Class seek monetary relief against GM in an amount to be determined at trial. Plaintiffs and the Class also seek punitive damages because GM and Bosch engaged in aggravated and outrageous conduct with an evil mind.

1356. Plaintiffs also seek attorneys' fees and any other just and proper relief available.

## COUNT LXII

## FRAUDULENT CONCEALMENT
## (BASED ON WEST VIRGINIA LAW)

1357. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1358. This claim is brought on behalf of the West Virginia Class.

1359. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1360. GM and Bosch knew these representations were false when made.

1361. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, non-

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

1362. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1363. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1364. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1365. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1366. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1367. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1368. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual emissions of the vehicles, their actual philosophy with respect to compliance with federal and state clean air laws

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

1369. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1370. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1371. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1372. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to

the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1373. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1374. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1375. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's 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 Wisconsin Class

### COUNT LXIII

### VIOLATIONS OF THE WISCONSIN DECEPTIVE TRADE PRACTICES ACT (WIS. STAT. § 110.18)

1376. Plaintiffs (for purposes of all Wisconsin Class Counts) incorporate by reference all preceding allegations as though fully set forth herein.

1377. Plaintiffs bring this claim on behalf of the Wisconsin Class members.

1378. GM and Bosch are each a "person, firm, corporation or association" within the meaning of Wis. Stat. § 100.18(1).

1379. Plaintiffs and Wisconsin Class members are members of "the public" within the meaning of Wis. Stat. § 100.18(1). Plaintiffs and Wisconsin Class members purchased or leased one or more Affected Vehicles.

1380. 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 GM's and Bosch's business, it willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, and

that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, GM and Bosch engaged in deceptive business practices prohibited by the Wisconsin DTPA.

1381. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other Class members were deceived by GM's and Bosch's failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

1382. Plaintiffs and Class members reasonably relied upon GM's and Bosch's false misrepresentations. They had no way of knowing that GM's and Bosch's representations were false and gravely misleading. As alleged herein, GM and Bosch engaged in extremely sophisticated methods of deception. Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own.

1383. GM's and Bosch's actions as set forth above occurred in the conduct of trade or commerce.

1384. GM's and Bosch's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1385. GM and Bosch intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiffs and the Class.

1386. GM and Bosch knew or should have known that its conduct violated the Wisconsin DTPA.

1387. GM and Bosch owed Plaintiffs and the Class a duty to disclose the truth about its emissions systems manipulation because GM:

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/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 that contradicted these representations.

1388. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the

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

1389. GM's and Bosch's conduct proximately caused injuries to Plaintiffs and the other Class members.

1390. Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of GM's and Bosch's conduct in that Plaintiffs and the other Class 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 GM's and Bosch's misrepresentations and omissions.

1391. GM's and Bosch's violations present a continuing risk to Plaintiffs as well as to the general public. GM's and Bosch's unlawful acts and practices complained of herein affect the public interest.

1392. Plaintiffs and the Wisconsin Class are entitled to damages and other relief provided for under Wis. Stat. § 100.18(11)(b)(2). Because GM's and Bosch's conduct was committed knowingly and/or intentionally, Plaintiff` and the Wisconsin Class are entitled to treble damages.

1393. Plaintiffs and the Wisconsin Class also seek court costs and attorneys' fees under Wis. Stat. § 110.18(11)(b)(2).

## COUNT LXIV

## FRAUDULENT CONCEALMENT (BASED ON WISCONSIN LAW)

1394. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

1395. This claim is brought on behalf of the Wisconsin Class members.

1396. GM and Bosch intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of GM's and Bosch's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or GM and Bosch acted with reckless disregard for the truth, and denied Plaintiffs and the other Class members information that is highly relevant to their purchasing decision.

1397. GM and Bosch knew these representations were false when made.

1398. The Affected Vehicles purchased or leased by Plaintiffs and the other Class members were, in fact, defective, emitting pollutants at a much higher rate than gasoline powered vehicles and at a much higher rate than a reasonable

consumer would expect in light of GM's and Bosch's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1399. GM and Bosch had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that these Affected Vehicles were defective, employed a "Defeat Device," emitted pollutants at a much higher rate than gasoline powered vehicles, that the emissions far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, because Plaintiffs and the other Class members relied on GM's and Bosch's material representations that the Affected Vehicles they were purchasing were reduced emission vehicles, efficient, and free from defects.

1400. As alleged in this Complaint, at all relevant times, GM and Bosch have held out the Affected Vehicles to be reduced emission, EPA-compliant vehicles. GM and Bosch disclosed certain details about the GM Clean Diesel engine, but nonetheless, GM and Bosch intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed a "Defeat Device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels

of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1401. The truth about the defective emissions controls and GM's and Bosch's manipulations of those controls, unlawfully high emissions, the "Defeat Device," and non-compliance with EPA emissions requirements was known only to GM; Plaintiffs and the Class members did not know of these facts and GM and Bosch actively concealed these facts from Plaintiffs and Class members.

1402. Plaintiffs and Class members reasonably relied upon GM's and Bosch's deception. They had no way of knowing that GM's and Bosch's representations were false and/or misleading. As consumers, Plaintiffs and Class members did not, and could not, unravel GM's and Bosch's deception on their own. Rather, GM and Bosch intended to deceive Plaintiffs and Class members by concealing the true facts about the Affected Vehicle emissions.

1403. GM and Bosch also concealed and suppressed material facts concerning what is evidently the true culture of GM and Bosch—one characterized by an emphasis on profits and sales above compliance with federal and state clean air laws and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiffs and Class members placed in their representations. Consumers buy diesel cars from GM and Bosch because they feel they are clean diesel cars. They do not want

to be spewing noxious gases into the environment. And yet, that is precisely what the Affected Vehicles are doing.

1404. GM's and Bosch's false representations were material to consumers because they concerned the quality of the Affected Vehicles, because they concerned compliance with applicable federal and state law and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As GM and Bosch well knew, GM's customers, including Plaintiffs and Class members, highly valued that the vehicles they were purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1405. GM and Bosch had a duty to disclose the emissions defect, defective design of the emissions controls, and violations with respect to the Affected Vehicles because details of the true facts were known and/or accessible only to GM and Bosch, because GM and Bosch had exclusive knowledge as to such facts, and because GM and Bosch knew these facts were not known to or reasonably discoverable by Plaintiffs or Class members. GM and Bosch also had a duty to disclose because they made general affirmative representations about the qualities of the vehicles with respect to emissions, starting with references to them as *reduced emissions* diesel cars and as compliant with all laws in each state, which were misleading, deceptive, and incomplete without the disclosure of the

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

1406. GM and Bosch 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 the vehicles were not clean diesel vehicles and did not or could not comply with federal and state laws governing clean air and emissions, which perception

would hurt the brand's image and cost GM and Bosch money, and it did so at the expense of Plaintiffs and Class members.

1407. GM and Bosch have still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles.

1408. Plaintiffs and Class 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 GM, 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 Class members' actions were justified. GM and Bosch were in exclusive control of the material facts, and such facts were not generally known to the public, Plaintiffs, or Class members.

1409. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damage because they own vehicles that are diminished in value as a result of GM's and Bosch's concealment of the true quality and quantity of those vehicles' emissions and GM's and Bosch's failure to timely disclose the defect or defective design of the GM Clean Diesel engine system, the actual emissions qualities and quantities of GM-branded vehicles, and

the serious issues engendered by GM's and Bosch's corporate policies. Had Plaintiffs and Class members been aware of the true emissions facts with regard to the Affected Vehicles, and the Company's disregard for the truth and compliance with applicable federal and state law and regulations, Plaintiffs and Class 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.

1410. The value of Plaintiffs' and Class members' vehicles has diminished as a result of GM's and Bosch's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished the GM brand name attached to Plaintiffs' and Class 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.

1411. Accordingly, GM and Bosch are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

1412. GM's and Bosch's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and Class members' rights and the representations that GM and Bosch made to them, in order to enrich GM. GM's and Bosch's 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 State Classes, respectfully request that the Court enter judgment in their favor and against GM and Bosch, as follows:

A. Certification of the proposed Classes, 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 GM and Bosch 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: April 6, 2018 HAGENS BERMAN SOBOL SHAPIRO LLP

By *_/s/ Steve W. Berman_*

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 6, 2018 the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

By: s/ *Steve W. Berman*
Steve W. Berman