

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ROBERT MIDDIEEN, on behalf of himself
and all other similarly situated,

Plaintiff,

v.

VOLVO CARS OF NORTH AMERICA,
LLC; and VOLVO CAR USA, LLC,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff Robert Middien alleges for his complaint the following.

Preliminary Statement

1. This is a class action brought by the plaintiff, Robert Middien (“Middien” or the “Plaintiff”), on behalf of himself and all other purchasers and lessees of the 2014 and 2016 Volvo XC90 and certain similarly situated purchasers and lessees of the 2017 Volvo XC90 (collectively, the “Non-Compatible Volvo XC90s”), as detailed herein. This case concerns Volvo’s ubiquitous misrepresentations in its marketing of the Non-Compatible Volvo XC90s that those

cars featured compatibility with Android Auto, when in fact, the cars were not compatible with Android Auto.

2. In September 2014, Volvo first introduced for sale in the United States its new generation of Volvo XC90 luxury crossover SUVs. The XC90 was a completely redesigned model and Volvo's first flagship offering since Chinese automobile company Zhejiang Geely Holding Group Co. Ltd had acquired Volvo.

3. The Volvo XC90s sold in September 2014 were the 2014 XC90s. In 2015, Volvo began selling the 2016 XC90. Volvo did not sell a 2015 XC90. In developing and marketing the Volvo XC90, Volvo made substantial efforts to distinguish the Volvo XC90 from its competitors' automobiles by marketing it as more technologically advanced and unique than the competition.

4. In its public relations and marketing campaign for the Volvo XC90, Volvo touted an in-car technology user interface, which it called "Sensus." Volvo stated in its press releases and marketing materials that a significant, cutting edge feature of Sensus was that it was or would be compatible with the coveted Google application, Android Auto. That compatibility would enable the driver of the Volvo XC90 to integrate features in his or her Android smartphone with the Sensus system in the Volvo XC90.

5. Volvo's representations that the Sensus system in the Volvo XC90 was or would be compatible with Android Auto were false and misleading. Volvo has

now admitted that the Sensus system in the Non-Compatible Volvo XC90s was not compatible with Android Auto, and the Sensus system in the Non-Compatible Volvo XC90s are not and never will be compatible with Android Auto.

6. By making ubiquitous misrepresentations that the Sensus system in the non-compatible Volvo XC90s was or would be compatible with Android Auto, Volvo (i) engaged in deceptive acts in violation of New Jersey's Consumer Fraud Act ("the NJCFA"), N.J. Stat. § 56:8-2, *et seq.*; and (ii) breached express warranties by description in violation of N.J. Stat. § 12A:2-313(b) (which is also known as UCC § 2-313(b)). Volvo is liable to Plaintiff and all other similar situated members of the Class defined below for all damages resulting from its violations of the NJCFA and UCC § 2-313(b).

Parties

7. Plaintiff Robert Middien is a resident of Chestnut Hill, Massachusetts.

8. Defendant Volvo Car USA, LLC, is a limited liability company organized under Delaware law with its principal place of business in Rockleigh, New Jersey. It imports Volvo automobiles into the United States and sells them to authorized Volvo dealers for sale or lease to purchasers or lessees of the Volvo automobiles.

9. Defendant Volvo Cars of North America, LLC is a limited liability company organized under Delaware law with its principal place of business in Rockleigh, New Jersey. It provides marketing, sales, parts, service, technology, and training support to Volvo automotive retailers in the United States.

10. The Defendants Volvo Car USA, LLC, and Volvo Cars of North America, LLC, are affiliates of each other and collectively referred to in this complaint as “Volvo” or the “Defendants.”

Jurisdiction

11. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332(d) and 1453, because (1) this action is a “class action,” which contains class allegations and expressly seeks certification of a proposed class of individuals; (2) the putative Class consists of more than one hundred proposed class members; (3) the citizenship of at least one class member (Plaintiff, a citizen of Massachusetts) is different from Defendants’ citizenship (Delaware and New Jersey); and (4) the aggregate amount in controversy by the claims of Plaintiffs and the putative Class exceeds \$5,000,000, exclusive of interest and costs.

12. This Court also has personal jurisdiction over Defendants because Defendants do business in Massachusetts and some of the actions that give rise to this case took place in Massachusetts.

13. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because Defendants are subject to personal jurisdiction in this District, and some of the actions that give rise to this case occurred in this District.

Factual Allegations

14. In or about May 2016, the Plaintiff purchased a 2016 Volvo XC90 from 128 Volvo, an authorized Volvo dealership in Wakefield, Massachusetts. The Plaintiff's Volvo XC90 is one of the Non-Compatible Volvo XC90s.

15. Android Auto is a smartphone application for Google Android cellphones, designed to work seamlessly with the display screen of the Google Android user's car. Users can control their smartphone through the car's touchscreen display, steering wheel buttons, and/or voice commands. Certain applications and functions of the smartphone are displayed on the console, including telephone calls, text messaging, music/podcast players, and driving directions apps like Google Maps or Waze.

Volvo's Deceptive Conduct Occurred In New Jersey

16. Volvo developed the press releases, marketing materials, and planned and made other statements relevant to Plaintiff's claims in New Jersey. Volvo made the representations detailed below from its headquarters in New Jersey. Although

consumers received the representations throughout the United States, all of the deceptive conduct alleged in this complaint emanated from New Jersey.

17. Volvo's marketing staff for its North American operations is based in New Jersey. For example, Volvo's Executive Vice President of Marketing in North America from 2014 through February 2017, Bodil Eriksson, moved to New Jersey from Sweden and led the development of Volvo's marketing strategies, including for the Volvo XC90, from New Jersey.

18. Other key Volvo marketing staff is based on New Jersey, including Volvo's Director of Marketing Innovation and Strategy, John Militello; Marketing Communications Manager Kevin Corcoran; Director of Marketing Operations, Jay Hammill; Technology and Product Communications Manager, Jim Nichols; and Head of Marketing, Communications and Product Strategy for the Americas, Bob Jacobs.

19. The LinkedIn profiles of key Volvo marketing executives also confirm that Volvo's United States marketing emanates from New Jersey. For example, Volvo's Director of Marketing, John Militello, explains in his LinkedIn Profile that he "oversees all US marketing efforts" from Rockleigh, New Jersey. Mr. Militello specifically emphasizes his marketing efforts for the XC90 from Volvo's Rockleigh, New Jersey offices.

20. Similarly, Volvo's Head of Marketing, Communications, and Product Strategy for the Americas, Bob Jacobs, states in his LinkedIn profile that he is "[r]esponsible for all Marketing, Communications and Product Strategy for Volvo Cars US" and carries out those responsibilities from Rockleigh, New Jersey.

21. Volvo's Product Communications Manager, Jim Nichols, likewise states in his LinkedIn profile that he works for Volvo in New Jersey and is responsible for "manag[ing] product and technology communications for Volvo Cars in the United States," including "[o]rganiz[ing] and plan[ning] media launches and press drives" and setting "communications strategies for product and technology launches." As detailed herein, those are the types of communications, regarding the Volvo XC90 upon which this complaint is based.

22. Similarly, Volvo's Manager, Marketing Platforms & Technologies Linda Gangeri confirms that Volvo works to "Deliver an integrated marketing strategy across all consumer touchpoints" from its offices in Rockleigh, New Jersey.

Volvo's Press Releases Regarding the Volvo XC90 and Android Auto

23. In its promotions for the XC90, Volvo specifically focused on the Sensus system, emphasizing its compatibility with Android Auto. As demonstrated below by Volvo's press releases and other statements, Volvo would sometimes falsely represent that Sensus on the Volvo XC90 was compatible with Android Auto, whereas sometimes it would instead represent that Sensus would become compatible

with Android Auto in the future. In any event, those representations were untrue because, as Volvo now admits, the Sensus never was, and never will be, compatible with Android Auto in the Non-Compatible Volvo XC90s. A sample of Volvo's press releases and public statements regarding the compatibility of the Sensus system in the Volvo XC90 with Android Auto is set forth below.

24. In a June 25, 2014 press release, Volvo announced that Android Auto would be available in its next generation of vehicles, specifically including the Volvo XC90. Volvo's press release read in full as follows:

Volvo Cars adds Android Auto to its next generation of cars

June 25, 2014 | ID: 147835

Volvo Car Group joins the Open Automotive Alliance

Volvo Car Group (Volvo Cars) has joined the Open Automotive Alliance to make the Android smartphone platform available to drivers through its new ground-breaking user interface. This move brings together one of the world's most progressive car companies and the world's most popular smartphone platform, developed by Google.

The integration of Android Auto™ promises to add yet another dimension to the Volvo in-car experience. Android Auto brings features and services familiar to Android smartphone and tablet users directly into the car via Volvo Cars' large center console touch screen display.

“Google's approach to user-centricity and the application of technology to improve peoples' everyday lives makes Android Auto a perfect addition to the Volvo experience,” said Håkan Samuelsson, President and CEO of Volvo Cars.

The interaction between Android Auto and Volvo Cars' brand new user interface transforms the look and feel of a car's interior. Volvo Cars'

interiors will be characterized by their high-tech simplicity and functionality.

“We have worked hard to ensure an enjoyable user experience with Android Auto. This will offer our customers a new degree of fluidity and accessibility in the usage of their mobile devices, and bring the digital ecosystem our customers already enjoy into the car, complementing Volvo Cars’ existing connected car services and applications,” said Samuelsson.

Android Auto will provide access to Google Search, Google Maps, Google Play Music and specially adapted third party applications, such as Spotify. All phone-based applications can be controlled via voice or steering wheel controls or the car’s touch screen ensuring the entire interaction with Android Auto content is both safe and easy.

Volvo Cars' portrait touch screen provides users with the benefit of having both Volvo Cars and Android Auto content on the screen simultaneously, removing the need to switch between car and Android phone screens.

“Android smartphone users will feel completely at home in a new Volvo. We have created a wholly-integrated user experience in our large portrait-oriented touch screen that takes the in-car mobile device experience to a new level. That, coupled with the obvious driver safety benefits of an advanced voice control system offered by Google, made Android Auto a perfect match for Volvo,” said Samuelsson.

Android Auto will be available on all new Volvo cars based on the new Scalable Product Architecture (SPA), **starting with the all-new XC90**, due to be publically revealed at this year’s Paris Motor Show.

(Emphasis added).

25. In an October 21, 2014 press release, Volvo, when introducing the new generation Volvo XC90, touted the Sensus system and its “ability to mirror and use Apple and Android devices on Sensus’ touchscreen display.” In that press release, Volvo said:

The all-new Volvo XC90

Oct 21, 2014 | ID: 153587

The all-new Volvo XC90 is a visually striking, premium quality seven seat SUV with world leading safety features, new powertrain technologies, an unrivalled combination of power and fuel efficiency and a superlative interior finish.

The new XC90 marks the beginning of a new chapter in Volvo's history, capturing its future design direction, incorporating its own range of new technologies and utilising its new Scalable Product Architecture (SPA) technology.

SENSUS

Most modern control system on the market

The new Sensus user interface is without doubt the most modern in-car control system on the market. It completely reinvents the way drivers operate their cars.

The traditional selection of buttons and controls has been replaced with a smooth, intuitive interaction between a large tablet-like touch screen, controls on the steering wheel and a capable voice-control system.

The digital instrumentation and the head-up display in front of the driver make sure that the most relevant information is available when needed.

Sensus gives comfortable access to a wide selection of cloud-based applications. The outstanding in-car possibilities includes Internet radio, connected navigation, finding and paying for parking, seamless music streaming, **the ability to mirror and use Apple and Android devices in the touch screen display**, a hot spot for using a tablet in the car – and much more.

(Emphasis added).

26. On September 17, 2015, Volvo issued a press release that expressly represented that the Sensus system on the Volvo XC90 was compatible with Android Auto. That press release read in part as follows:

Volvo Car USA Press Release

What's New: 2016 Volvo XC90

Sep 17, 2015 | ID: 163170

XC90 T6 AWD Momentum

All new models for 2016 include the following features:

-
- Sensus High Performance Audio System with 330-watt amplifier and 10 speakers
- Sensus Navigation System with voice control and lifetime map upgrades
-
- **Compatibility with Android Auto**

XC90 T6 AWD Inscription

- ...
- Sensus High Performance Audio System with 330watt amplifier and 10 speakers
- Sensus Navigation System with Voice Control and Lifetime Upgrades
- ...
- **Compatibility with Android Auto**

XC90 T6 AWD R-Design

- ...
- Sensus High Performance Audio System with 330watt amplifier and 10 speakers

- Sensus Navigation System with Voice Control and Lifetime Upgrades
-
- **Compatibility with Android Auto**

(Emphasis added).

27. On the very same day, Volvo issued another press release in which it both continued to represent that the 2016 Volvo XC90 was compatible with Android Auto and, contradicting that representation, said that Sensus in the 2016 Volvo XC90s was not yet compatible with Android Auto but represented that Volvo would make it compatible in the future. Volvo, however, nonetheless touted the features of the Android Auto application. The press release is presented below:

Model Overview: 2016 Volvo XC90

Sept 17, 2015 | ID: 163169

Advanced Sensus Connect Technology

The XC90's new Sensus user interface is the most modern in-car control system on the market today. Volvo's interior design goal was to create a safer environment by adding a more intuitive interface that was both simple to operate and aesthetically elegant.

Sensus provides comfortable access to a wide selection of cloud-based applications. The in-car possibilities include Internet radio, connected navigation, finding and paying for parking, seamless music streaming, **the ability to mirror** and use Apple and **Android devices in the touchscreen display**, a hotspot for using a tablet in the car and much more.

Information on the center touchscreen is organized in a stack of four "tiles," each displaying a key functionality:

- Navigation

- Media
- Phone
- User-defined Title (such as Apple CarPlay™)

Apple and Volvo Cars are joining forces to make Apple's widely used operating system available to XC90 drivers. Apple CarPlay™ makes it possible to seamlessly integrate an iPhone (version 5 or later) and access selected functionalities and apps via the large center touchscreen. The iPhone can be controlled via the touchscreen or by Siri voice commands via the XC90's audio system.

The all-new XC90 will be the first Volvo to offer this functionality and CarPlay can be retrofitted to any 2016 XC90 that was produced prior to availability.

A similar interface for Android phones is under development and will be introduced at a later date. The integration of Android Auto™ promises to add yet another dimension to the XC90's in-car experience. Android Auto will bring features and services familiar to Android smartphone and tablet users directly into the car.

Android Auto will provide access to Google Search, Google Maps, Google Play Music and specially adapted third-party applications such as Spotify. All phone-based applications can be controlled via voice or steering wheel controls or the car's touchscreen ensuring the entire interaction with Android Auto content is both safe and easy.

(Emphasis added).

28. Volvo continued to tout the forthcoming Android Auto compatibility in its 2016 XC90s in a press release announcing that the 2016 XC90 had won several awards at the 2016 Chicago Auto Show:

Volvo Car USA Press Release

New Volvo S90 Luxury Sedan Makes Chicago Debut, XC90 SUV Presented With Three Awards at 2016 Chicago Auto Show

Feb 11, 2016 | ID: 173852

... The seven-passenger XC90 was given a *MotorWeek* Driver's Choice award, named Best Family Car by the Midwest Automotive Press Association (MAMA), and was selected as a *Consumer Guide* Automotive Best Buy (Premium Midsize Crossover/SUV) at separate media events here....

The XC90 is equipped with Intellisafe, a suite of standard safety features and technologies that make it an IIHS Top Pick+. Sensus, Volvo's unique infotainment system, is controlled through a 9.3-inch tablet-like touch screen that allows drivers an incredible amount of personalization. **Apple CarPlay is available now and Android Auto is coming soon.**

(Emphasis added).

29. On March 1, 2016, Volvo continued to misrepresent the Sensus system's compatibility with Android Auto. It said in a press release:

Volvo Car USA Press Release

Volvo XC90 – model year 2017

Mar 1, 2016 | ID: 190756

The XC90 is a premium seven seat SUV designed to deliver a luxurious user experience, whilst retaining the ride height, space and practicality that typifies this segment....

Connectivity

All new Volvos are now connected, thanks to Volvo's connectivity offering called Sensus. It delivers an intuitive touch screen interface that combines car functions, navigation, connected services and in car entertainment applications such as Spotify, Pandora, or TuneIn. The portrait oriented touch screen enables easy and fast access to a host of functions and features. **See our Sensus factsheet for more details.**

(Emphasis added).

30. The referenced “Sensus factsheet,” made available on Volvo’s website, read and contained the photograph and caption thereto, as follows:

SENSUS

A technology factsheet on Volvo Cars’ user interface technology across the range

Smartphone integration

Volvo Cars’ Sensus user interface can now be equipped with smartphone integration, which allows you to access specific phone features directly via the touch screen.



Image shows Android Auto in car screen

Sensus works seamlessly with both Apple CarPlay and **Android Auto**.

Unlike other automakers, Volvo Cars has a fully native integration, ensuring a better overall experience and removing the need to switch from your phone’s screen to the car screen.

As you can see from the images above with the examples of CarPlay and Android Auto integration, your car’s other ‘tiles’ are available at all times.

...distinct, easy-to-use and enjoyable user experience.

(Emphasis added).

Automotive Reviews of the Volvo XC90 and Android Auto

31. Volvo designed and intended that its press releases and other public relations and marketing efforts would spread among automobile reviewers, Volvo dealers, and others the “fact” that the Sensus system on the Volvo XC90 was or would be compatible with Android Auto. Volvo designed and intended for the automobile reviewers, Volvo dealers, and others to then repeat and pass on to prospective purchasers or lessees of the Volvo XC90 the “fact” that the Sensus system on the Volvo XC90 was or would be compatible with Android Auto.

32. Car reviews in the media are typically based on information carefully controlled by manufacturers. During press tours, manufacturers’ press teams make presentations to reviewers detailing the various features and functions of the vehicle for the reviewers to use in their reviews. Manufacturers often pay reviewers for permission to use excerpts from positive reviews, which are based on manufacturer-provided information and demonstrations. Manufacturers are thus able to control most of the information disseminated to the public through third party car reviews about the current or promised features of their vehicles.

33. Volvo succeeded in its effort to have automobile reviewers, Volvo dealers, and others repeat and pass on to prospective and actual purchasers or lessees of the Volvo XC90 the “fact” that the Sensus system on the Volvo XC90 was or

would be compatible with Android Auto. The automotive press was replete with reviews of the Volvo XC90 which, in describing the Volvo XC90, stated that the Sensus system on the Volvo XC90 was or would be compatible with Android Auto. Some examples of those reviews are as follows.

34. On August 16, 2014, *Motor Trend* published an article entitled “2016 Volvo XC90 First Look.” This article says that the 2016 Volvo XC90’s Sensus “**works with** both Apple CarPlay and **Google Android Auto.**”¹

35. On February 23, 2015, *Kelly Blue Book* published an article entitled “2016 Volvo XC90 First Review: Promise delivered.” This article describes that the 2016 Volvo XC90’s Sensus console has “**connectivity capabilities including...Android Auto.**”

36. On June 22, 2015, *GQ* published an article entitled “This is the SUV it’s OK to love.” This article says that the 2016 Volvo XC90’s Sensus will “**handle...Android Auto.**”

37. On Friday, October 16, 2015, *New York Daily News* published an article entitled “Review: 2016 Volvo XC90.” This review stated that for the 2016 Volvo XC90 “**Android Auto is standard....**”

¹ All bold quotations hereinafter from auto reviews, unless otherwise indicated, are “emphasis added.”

38. On November 25, 2015, *Jalopnik* published an article entitled “Volvo XC90: The Ultimate Buyer’s Guide.” This article listed among **“Notable Features:... Android Auto compatibility.”**

39. On December 15, 2015, *JD Power* published an article entitled “Apple CarPlay vs. Android Auto.” Under “a list of new car, truck, and SUV models that **are available** with Android Auto (2016 model year unless otherwise noted),” the review lists “Volvo: XC90.”

40. On July 22, 2016, *eBaymotors* published an article entitled “Volvo XC90 SUV sets a High Mark for 21st Technology.” This article states that the 2016 XC90 **“is among a growing list of automobiles that comes standard with...Android Auto.”**

41. On August 18, 2016, *Forbes* published an article entitled “Volvo’s XC90 Is A Truly Admirable Technological Feat.” This article describes Volvo’s 2016 XC90 as offering “top notch infotainment,” stating that **“[t]wo of the major players in in-car infotainment, Android Auto and Apple CarPlay, are available on the XC90 as a compliment to Volvo’s own near-flawless Sensus Connect”.**

42. On March 17, 2017, *Gotta Be Mobile* published an article entitled “2017 Volvo XC90 Review.” This article states that in the 2017 XC90 **“you can use...Android Auto.”**

The Non-Compatible Volvo XC90s

43. On or about December 2016, Volvo added Android Auto to the 2017 XC90s that it was then manufacturing. Volvo also offered complimentary upgrades to create Sensor compatibility with Android Auto. However, **those upgrades were only available for 2017 XC90 models that had been built after April 2016. And, those upgrades were not available for any 2016 Volvo XC90s.**

44. On its website, Volvo now admits that the Sensus system on the 2016 XC90 is not and never will be compatible with Android Auto. Specifically, Volvo says:

For installation of Android Auto to be possible, the car must be equipped with two USB ports (USB hub). If the car has only one USB port then it is not possible to use Android Auto. **It is not possible to install Android Auto on the XC90 or XC90 Twin Engine model year 2016 since they do not have the USB hub. It is not possible to retrofit the USB hub on these models.**

(Emphasis added).

45. The 2014 and 2016 Volvo XC90s have only one USB port and hence it is also not possible to install Android Auto on that model and it is not possible to retrofit the USB hub on that model. Hence, that model is and always will be incompatible with Android Auto.

46. The 2017 Volvo XC90s that Volvo manufactured before April 2016 also have only one USB port and hence it is also not possible to install Android Auto on those 2017 Volvo XC90s, and it is not possible to retrofit the USB hub on those

2017 Volvo XC90s. Hence, those 2017 Volvo XC90s are, and always will be, incompatible with Android Auto.

47. As previously noted, all of the 2014 and 2016 Volvo XC90s and the 2017 Volvo XC90s manufactured before April 2016 are collectively referred to herein as the “Non-Compatible Volvo XC90s.” Volvo’s repeated representations that Non-Compatible Volvo XC90s were or would become compatible with Android Auto were false and misleading.

48. Based upon sales data publicly reported by Volvo, Plaintiff estimates that approximately 29,000 Non-Compatible Volvo XC90s were sold or leased in the United States.

49. As a consequence of the above, the Plaintiff and all purchasers and lessees of the Non-Compatible Volvo XC90s (who, as detailed below are the members of the putative class) have suffered injury and been damaged by Volvo’s misrepresentations and breaches of its express warranties by description. Specifically, Plaintiff and all members of the putative class paid for a Volvo XC90 that was represented and warranted by description as being compatible with Android Auto or that Volvo would make it compatible with Android Auto, but the Volvo XC90 they received was not and can never be made compatible with Android Auto.

50. Plaintiff and all members of the putative class received vehicles that were substantially less valuable than the vehicles that Defendants represented and

warranted to them, due to the failure of Defendants to deliver a specific, bargained-for characteristic: Android Auto compatibility.

Class Action Allegations

51. Plaintiff re-alleges and incorporates the allegations contained in the paragraphs above.

52. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a Class consisting of:

All persons who purchased or leased, anywhere in the United States, a new 2014 or 2016 Volvo XC90, and all persons who purchased or leased a new 2017 Volvo XC90 with a Sensus system that is incompatible with Android Auto and cannot be made compatible with Android Auto (the “Class” or the “Members of the Class”).

53. Plaintiff reserves the right to amend the definition of the Class.

54. This action is properly maintainable as a class action.

55. There are approximately 29,000 members of the Class. Accordingly, joinder of all members is impractical.

56. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among questions of law and fact in common to the Class are:

a. Whether Volvo misrepresented the features of Non-Compatible Volvo XC90s by representing that such vehicles were or would become compatible with Android Auto;

b. Whether Non-Compatible Volvo XC90s are, in fact, not compatible with Android Auto;

c. Whether Volvo, in its marketing and sale of the Non-Compatible Volvo XC90s violated the New Jersey Consumer Fraud Acts, N.J. S.A. §56:8-2, *et seq.*

d. Whether Volvo breached its express warranty by description when it delivered Non-Compatible Volvo XC90s with Sensus systems that lacked the promised compatibility with Android Auto.

57. Plaintiff's claims are typical of the claims of each member of the Class in that Plaintiff alleges a common course of conduct by Volvo toward each member of the Class—specifically, Volvo violated the NJCFA and breached its express warranty by description with each member of the Class. Plaintiff and the other members of the Class seek identical remedies under identical legal theories. There is no antagonism or material factual variation between Plaintiff's claims and those of the Class.

58. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel who have extensive experience prosecuting

class actions and who, with Plaintiff, are fully capable of, and intent upon, vigorously pursuing this action. Plaintiff does not have any interest adverse to the Class.

59. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Furthermore, the damage that has been suffered by any individual Class member is likely not enough to sustain the expense and burden of individual litigation. Hence it would be impracticable for all members of the Class to redress the wrongs done to them individually. There will be no difficulty in the management of this action as a class action.

60. The prosecution of separate actions against Defendants would create a risk of inconsistent or varying adjudications with respect to the individual Class members, which could establish incompatible standards of conduct for Defendants. In addition, adjudications with respect to individual members of the Class could, as a practical matter, be dispositive of the interests of the other members of the Class not parties to such adjudications, or could substantially impede or impair their ability to protect their interests.

61. The members of the Class are readily identifiable through Defendants' records.

62. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

Count I

Violations of New Jersey's Consumer Fraud Act, N.J.S.A. § 56:8-2, *et seq.*

63. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

64. Plaintiff brings this claim against Volvo on behalf of himself and the Class.

65. Volvo has engaged in deceptive, unfair, fraudulent and/or misleading commercial practices in the advertising, promotion, marketing, distribution, selling and leasing of Non-Compatible Volvo XC90s.

66. Volvo represented that Non-Compatible Volvo XC90s had characteristics, uses, benefits, or qualities that they did not have—specifically, that those vehicles were or would be compatible with Android Auto, when, in fact, the vehicles were not compatible with Android Auto and would never be compatible.

67. In its advertising, promotion, marketing, distributing, selling and leasing of the Non-Compatible Volvo XC90s, Volvo misrepresented material facts

from Plaintiff and other members of the Class with respect to the vehicles' compatibility with Android Auto.

68. Volvo's conduct was objectively deceptive, and had the capacity to deceive reasonable consumers under the circumstances. The fact that the Non-Compatible Volvo XC90s were not compatible with Android Auto was a material fact to which a reasonable consumer would attach importance at the time of purchase or lease.

69. Volvo's practices, as detailed herein, violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

70. As a direct and proximate result of Defendants' violations of the New Jersey Consumer Fraud Act, Plaintiff and other members of the Class have suffered ascertainable losses, which include but are not limited to, the diminished value of their vehicles and the failure to receive the benefit of the bargain promised to them by Defendants (i.e., the vehicles they received were less valuable than the vehicles Defendants promised to them). Accordingly, Plaintiff and other members of the class were harmed by, and Defendants are liable for, Defendants' actions in violation of the New Jersey Consumer Fraud Act.

71. Defendants are liable to Plaintiff and the members of the Class for treble damages caused by their deceptive conduct, and for reasonable attorneys' fees as set forth in the New Jersey Consumer Fraud Act.

Count II

Breach of Express Warranty by Description

72. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

73. Plaintiff brings this claim against Volvo on behalf of himself and the Class pursuant to Section 2-313(b) of the Uniform Commercial Code, adopted under New Jersey law pursuant to N.J. Stat. § 12A:2-313(b). That section provides: “Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to that description.”

74. Volvo described Non-Compatible Volvo XC90s in its advertisements, press releases, specifications provided to dealers, information provided to the press, and through other media, which it knew would be communicated to consumers either directly or indirectly. Volvo’s description included that the Non-Compatible Volvo XC90s would be compatible with Android Auto. Volvo’s repeated representations that the Non-Compatible Volvo XC90s would be compatible with Android Auto were express warranties by description under N.J. Stat. § 12A:2-313(b).

75. Volvo’s express warranties by description that the Non-Compatible Volvo XC90s would be compatible with Android Auto were designed to induce

Plaintiff and other members of the Class to purchase the Non-Compatible Volvo XC90s.

76. Volvo's express warranties by description became part of the basis of the bargain into which Plaintiff and other members of the Class entered when they purchased the Non-Compatible Volvo XC90s.

77. Given the modern significance of compatibility of vehicles with cell phones, as represented by Volvo's prominent representation of the Non-Compatible Volvo XC90s' compatibility with Android Auto, the natural tendency of Volvo's descriptions of the Non-Compatible Volvo XC90s was to induce the purchase or lease of the Non-Compatible Volvo XC90s.

78. Volvo breached its express warranties by description with Plaintiff and other members of the Class by delivering Non-Compatible Volvo XC90s that were not, and never could be, compatible with Android Auto.

79. By delivering a vehicle with a Sensus system lacking compatibility with Android Auto, Volvo has breached its express warranty by description to the purchasers and lessees of the Non-Compatible Volvo XC90s, including the Plaintiff and members of the Class.

80. As a direct and proximate result of Volvo's breach of its express warranties by description with Plaintiff and the members of the Class, Plaintiff and the members of the Class did not receive the full benefit of their bargain and suffered

damage by receiving vehicles that were less valuable than the vehicles that Defendants had represented to them.

81. Volvo is liable to Plaintiff and the members of the Class for all damages caused by Volvo's breach of express warranties by description.

Prayers for Relief

WHEREFORE, Plaintiff prays for relief in the form of an order as follows:

1. Allowing this action to proceed as a class action under Federal Rule of Civil Procedure 23, and appointing Plaintiff Middien as class representative and his attorneys as class counsel;
2. Awarding actual damages to Plaintiff and the Members of the Class;
3. Awarding attorneys' fees, expenses, and the costs of this suit, together with prejudgment and post-judgment interest at the maximum rate allowed by law; and
4. Awarding such other and further relief which the Court finds just and proper.

Jury Demand

Plaintiff demands a trial by jury on all claims so triable.

Dated: September 11, 2017

By his attorneys,

/s/ Edward F. Haber

Edward F. Haber (BBO # 215620)

Patrick J. Vallely (BBO # 663866)

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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
REAL PROPERTY
TORTS
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

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

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) _____

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ___ I. 410, 441, 470, 535, 830*, 891, 893, 894, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- ___ II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442-446, 710, 720, 730, 740, 790, 820*, 840*, 850, 870, 871.
- ___ III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 368, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 610, 620, 625, 630, 640, 650, 660, 690, 791, 810, 861-865, 875, 890, 892, 900, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME _____

ADDRESS _____

TELEPHONE NO. _____