

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

NICK LOWRY, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

ADDITECH, INC., a Texas corporation,

Defendant.

NO. 19-2-00613-7 SEA

CLASS ACTION COMPLAINT

Plaintiff Nick Lowry, on behalf of himself and all others similarly situated, alleges the following against Defendant Additech, Inc. ("Additech"). Plaintiff's allegations are based upon personal knowledge as to his own acts and experiences in this matter, the investigation of counsel, and upon information and belief as to all other matters.

I. INTRODUCTION

1. This action challenges Additech's advertising of its fuel additives. Additech's advertising makes false and misleading representations about the additives' efficacy that preys on consumers with limited knowledge of the inner-workings of combustion engines.

2. Additech markets and sells two fuel additives, Fuel System Cleaner and Diesel Guard, through large third-party, retail gas-station partners, such as QFC and Fred Meyer. Additech provides its retail partners with an integrated fuel additive system at the pump and supplies an interactive merchandising system that includes various on-site advertising and

1 video displays marketing its additives. Additech's on-site advertising touts the purported
 2 benefits of Additech's fuel additives, urging consumers to "go green with Additech" and
 3 representing without limitation that its products "reduce emissions," "increase mileage," and
 4 "restore power," to your engine.¹ As displayed in **Figure 1** below, advertising affixed to the
 5 side of the fuel pump purports to show how Additech works, picturing an intake valve coated in
 6 carbon deposits and an "after Additech" photo displaying a pristine intake valve with the
 7 carbon deposits completely removed.

8 **FIGURE 1**



21 3. Additech's website reinforces these representations, guaranteeing that
 22 Additech's products will "maximize[] gas mileage" and protect your engine, "boosting
 23 performance and helping avoid costly repairs." The website claims further that Additech's Fuel
 24
 25

26 ¹ Photos of this on-site advertising are attached hereto as Exhibits 1-4.
 27

1 System Cleaner and Diesel Guard “add miles of life to your car or truck” by “deep clean[ing]
2 your engine, removing sludge and built up carbon deposits from vital engine parts.”²

3 4. Additech’s claims about the benefits of its fuel additives are primarily based on
4 their ability to clean and prevent buildup of carbon deposits on intake valves and manifolds.
5 Additech’s products purportedly clean these engine parts when the additive-fuel mixture is
6 injected into the intake manifold and washes over the backside of the valves.

7 5. Approximately 50% of new vehicles, however, utilize gasoline direct injection
8 (“GDI”) engines that inject fuel directly into the combustion chamber, bypassing the intake
9 valves entirely and providing none of the cleaning benefits advertised by Additech. Diesel
10 engines also use direct injection, meaning that fuel cannot “wash” intake valves and manifolds
11 to remove deposits as represented. Thus, in both GDI and Diesel engines, Additech’s products
12 cannot provide the benefits promised in its advertising. Even in standard gasoline engines,
13 Additech’s bold advertising depicting a single application removing all carbon buildup on
14 intake valves has no basis in fact.

15 6. Although Additech’s fuel additives do not, and in the case of GDI and diesel
16 engines cannot, provide the advertised benefits, Additech inundates consumers purchasing fuel
17 at its partner gas stations with false and misleading representations about the advantages of
18 using its products, preying on those unfamiliar with engine functionality. Consumers are
19 especially susceptible to relying on Additech’s representations about the efficacy of its products
20 because the delivery system is integrated with the fuel pump. Unfortunately, this business
21 strategy has proven to be effective—Additech’s advertising has hoodwinked thousands of
22 Washington consumers into buying a fuel additive that is little more than snake oil.

23 7. Plaintiff, on behalf of himself and the Class set forth below, seeks to recover
24 damages and obtain injunctive relief under the Washington Consumer Protection Act (“CPA”)
25 to remedy Additech’s predatory unfair and/or deceptive advertising practices.

26
27 ² ADDITECH, <https://additech.com/products-page/> (last visited Dec. 11, 2018).

II. JURISDICTION AND VENUE

8. Defendant is within the jurisdiction of this Court. Defendant is registered to do business and does conduct business in Washington State by marketing, advertising, and selling its fuel additives to Washington residents through third-party retail partners in Washington. Thus, Defendants have obtained the benefits of the laws of Washington and are subject to the jurisdiction of this Court.

9. Venue is proper in King County. Defendant transacts business in King County and therefore resides in King County. RCW 4.12.020(3); RCW 4.12.025(1) & (3).

III. PARTIES

10. Plaintiff Nick Lowry is domiciled in the State of Washington and lives in Edmonds, WA.

11. Defendant Additech, Inc. is a Texas corporation headquartered in Houston, Texas. Additech is in the business of marketing and selling fuel additives. Additech sells its additives through third-party retailers in Alabama, Alaska, Colorado, Florida, Georgia, Idaho, Louisiana, South Carolina, Texas, and Washington.

IV. FACTUAL ALLEGATIONS

A. Engine Basics.

12. Internal combustion engines convert fuel into energy by mixing the fuel with air and igniting the mixture inside the engine. The resulting explosion pushes the pistons downward within the cylinder, which rotates the crankshaft creating rotational forces that spin the vehicle's wheels.

13. Traditional combustion engines use port fuel injection ("PFI") to transport gasoline from the fuel tank to the intake manifold where the fuel is mixed with air before ignition. In PFI engines, gasoline is pumped from the fuel tank into fuel injectors, which are mounted above the cylinders that house the engine's pistons. The injectors spray gasoline at low pressure into the air intake tract where air and fuel mix together into a fine mist. At certain

1 intervals, the intake valves covering the cylinders open to allow the mixture to enter the
2 combustion chamber.

3 14. The air intake manifold (or tract) sits immediately outside the combustion
4 chamber and is separated only by the intake valves covering the engine's cylinders. Because of
5 this anatomy, the gasoline injected by PFI engines washes over the backside of the intake valve
6 before entering the combustion chamber.

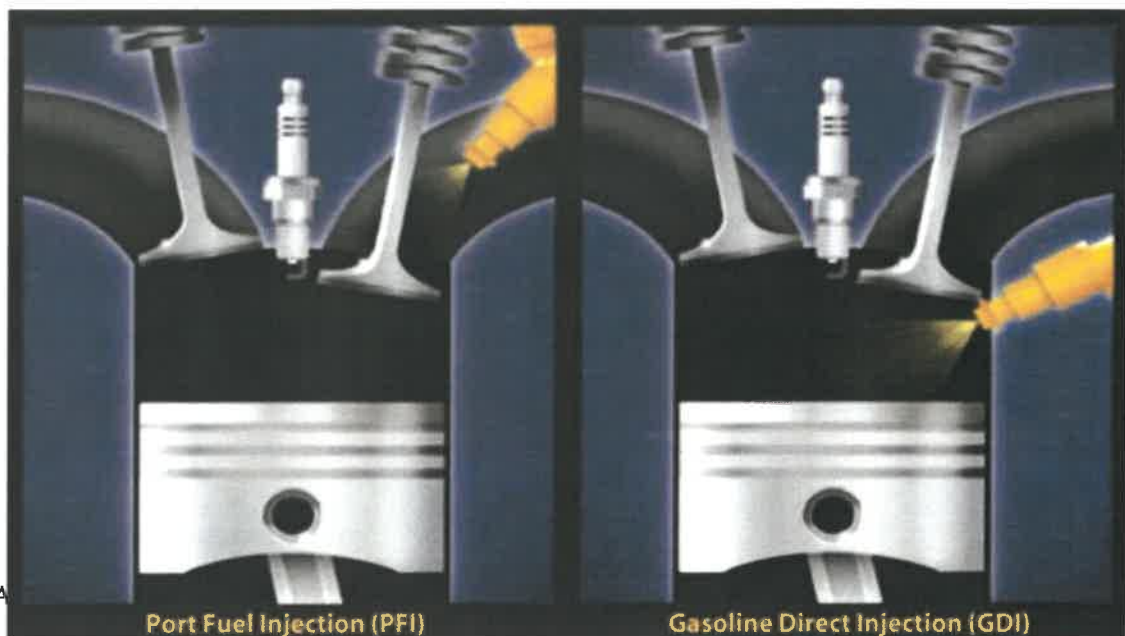
7 15. As illustrated by the image on the left side of **Figure 2** below, in engines using
8 port fuel injection the fuel injectors are located outside of the combustion chamber.

9 16. Although many vehicles still use PFI engines, vehicle manufacturers have
10 increasingly moved to a more efficient method of fuel injection that saves fuel and enhances
11 performance: gasoline direct injection ("GDI"). Today, approximately 50% of new vehicles are
12 equipped with GDI engines and it is estimated that by 2021 that number will be 80%.

13 17. As illustrated by the image on the right side of **Figure 2** below, in GDI engines,
14 gasoline is injected at high pressure directly into the combustion chamber, bypassing the intake
15 manifold altogether.

16 18. Like GDI engines, diesel engines inject fuel directly into the combustion
17 chamber. In order to ignite the fuel, diesel engines compress air in the cylinder prior to fuel
18 injection, heating the cylinder to a temperature sufficient for ignition.

19 **FIGURE 2**



1 Port Fuel Injection Visual, <http://www.bgnebraska.com/bg-gdi-solution/> (last visited Dec. 11,
2 2018)

3 **B. Fuel Additives.**

4 19. Many fuel retailers include additives in their fuels, such as oxygenates, anti-
5 oxidants, metal deactivators, corrosion inhibitors, antiknock agents, and fuel detergents, that are
6 designed to enhance engine performance and reduce damaging emissions.

7 20. Fuel detergents are among the most common additives and are designed to
8 prevent and remove carbon deposits that form on engine components as a result of fuel
9 combustion.

10 21. Detergent additives include: (1) polyether amines; and (2) polyisobutylene-
11 based compounds (“PIBs”) such as mannichs, amines, and succinimides. The effectiveness of
12 the fuel detergent depends on the chemical(s) used and the location of the carbon deposit.

13 22. These chemicals are often combined into proprietary “detergent packages” that
14 are added to gasoline and diesel fuel to help prevent build-up of carbon deposits and clean
15 those that have already formed.

16 23. In addition to detergents, many additives contain octane or cetane enhancers
17 designed to increase a fuel’s octane or cetane ratings. Gasolines with higher octane ratings are
18 capable of handling more compression before igniting, resulting in greater horsepower and
19 increased performance. Diesel fuels with higher cetane ratings have shorter ignition delay
20 periods, which also generates additional horsepower and enhances performance.

21 24. Since the 1990s, the EPA has required a minimum level of detergent for all fuel
22 sold in the United States. Thus, all gasoline and diesel fuels contain the minimum level
23 mandated by the EPA. Many fuel retailers add proprietary detergent blends designed to provide
24 more effective control of carbon deposits.

1 25. Approximately 60% of fuels sold in the United States are at or very close to the
2 minimum level of detergency to the EPA minimum. However, the EPA minimum may not be
3 sufficient to prevent carbon deposits.

4 26. In 2004, eight automakers (GM, Toyota, Honda, Mercedes-Benz, Fiat-Chrysler,
5 Volkswagen, Audi, and BMW) created the "Top Tier Performance" standard for detergent
6 content. The Top Tier Performance standard is the only industry standard that requires an
7 enhanced detergent package beyond the EPA minimum. Top Tier gasoline typically contains
8 between two and three times the concentration of detergent additives compared to the EPA
9 minimum and is currently sold in approximately one-third of all gas stations.

10 27. For more than fifteen years, the industry standard for evaluating fuel deposits
11 has been ATSM D6201. The ATSM D6201 standard requires that fuel be tested in a Ford 2.3L
12 PFI engine for 100 continuous hours. To qualify for Top Tier certification, a fuel must have
13 less than a 50 milligram carbon deposit average per intake valve.

14 28. In the fuel additive marketplace, there are two means of obtaining additives for
15 one's engine. The most common method is to purchase fuel at the pump that has additives
16 already mixed in. Owners can also to purchase a bottle of additive at an automotive retailer and
17 pour it into the fuel tank separately.

18 29. Two significant players in the gasoline additive marketplace are Chevron and
19 Shell. Each utilize their own proprietary additive. Chevron's Techron is a patented fuel additive
20 consisting of polyether amine based detergents. All of Chevron's gas is sold with Techron,
21 which is mixed in at the pump. Since the rollout of Techron, all Chevron gasoline qualifies for
22 Top Tier certification. Techron can also be purchased in a bottle independently. In fact,
23 Chevron claims a bottle of Techron results in an additive concentration at least ten times
24 stronger than Chevron gasoline pre-mixed with Techron. Shell's V-Power gasoline is another
25 patented premium based gasoline with its own proprietary additive; it also meets the standard
26 for Top Tier certification.

27

30. Detergent additives function by coating the air intake tract and backside of the valve to remove and prevent carbon buildup. However, in GDI and diesel engines, the additives bypass the air intake tract altogether because fuel is injected directly into the combustion chamber. Accordingly, in roughly 50% of cars today, detergent additives are incapable of preventing the formation of carbon deposits on intake manifolds and valves.

31. Some studies have shown that detergent additives can effectively reduce carbon deposits on intake tracts in non-GDI engines. The American Automobile Association conducted a study in 2016 on the effectiveness of Top Tier gasoline. Carbon deposits in the intake valve were shown to diminish 45% to as much as 72% after 5,000 miles on the road.³

C. Additech.

32. Additech develops and distributes two fuel additives, one for gasoline engines, Fuel System Cleaner, and the other for diesel engines, Diesel Guard. These products are sold in ten states: Alabama, Alaska, Colorado, Florida, Georgia, Idaho, Louisiana, South Carolina, Texas, and Washington.

33. Additech's Fuel System Cleaner and Diesel Guard products are detergent additives.

34. Additech's fuel additives are sold at the pump by the following retailers: QFC, H.E.B., Fred Meyer, King Soopers, Smith's Stores, City Market, and Kroger. The fuel additives are offered at over 3,000 fuel pumps and have over 4 million transactions annually.⁴ In return for distribution of Additech's products, gas stations receive a share of the revenue generated by sales.

35. In contrast to other additives, like Techron and V-Power, which are included in the price of fuel, Additech is an independent product with individual pricing on top of any fuel

³ AAA FUEL QUALITY RESEARCH: Proprietary research into the effectiveness of fuel additive packages in commercially-available gasoline, AMERICAN AUTOMOBILE ASSOCIATION, <https://www.aaa.com/AAA/common/AAR/files/Fuel-Quality-Full-Report.pdf> (last visited Dec. 11, 2018).

⁴ ADDITECH, <https://additech.com/about-us/> (last visited Dec. 11, 2018).

1 purchased. There are three tiers of Additech products a customer can choose from. When Mr.
 2 Lowry purchased the Fuel System Cleaner, as illustrated in **Figure 3** below, the tiers were
 3 called: (1) better mileage for \$2.99 per gallon; (2) best mileage for \$7.99; and (3) fuel system
 4 service for \$14.99. Recently, Additech renamed these tiers, offering (1) weekly clean for \$3.99;
 5 (2) monthly clean for \$7.99; and (3) quarterly clean for \$14.99. On information and belief, the
 6 renamed tiers are otherwise materially identical to the options offered when Mr. Lowry
 7 purchased Additech's Fuel System Cleaner.⁵

8 36. In addition to supplying an integrated fuel additive system, Additech provides
 9 retailers with an interactive merchandising system that includes various on-site advertising and
 10 video displays that play commercials for Additech's products while drivers fill up. After a
 11 customer selects the desired grade of gasoline, an audio recording claims that for less than half
 12 the cost of having the fuel system cleaned by a mechanic, Additech's products "clean your
 13 entire engine as your drive" and "are guaranteed to work." The recording then prompts
 14 consumers to "press yes to get Additech today."

15 37. Advertising affixed to the pump and supplied by Additech, claims that
 16 Additech's products will reduce harmful emissions. As illustrated in **Figure 3**, these
 17 advertisements are intended to induce environmentally conscious consumers to purchase the
 18 additives, indicating that consumers should "go green with Additech." Sometime after Mr.
 19 Lowry purchased Additech's Fuel System Cleaner, this advertising was changed. The sticker
 20 affixed to the pump now states "Additech concentrate plus—drive better farther longer."⁶

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 26 ⁵ A photo of the sticker depicting the renamed tiers is attached hereto as Exhibit 5.

27 ⁶ See Exhibit 5.

FIGURE 3

38. The display attached to the pump cycles through the purported benefits of Additech's products, indicating that the additives will "reduce emissions," "increase mileage," and "restore power" to your engine.⁷ The displayed advertisements urge consumers to "go green with Additech fuel additives"⁸ and claim that "if ten percent of motorists used Additech when they buy gas we would save enough gas to take 300,000 cars off the road."⁹

39. Additech's representations about the benefits of its fuel additives are primarily based on their ability to clean and prevent further buildup of carbon deposits on intake valves and manifolds.

⁷ See Exhibits 3-4.

⁸ See Exhibit 1.

⁹ A photo of this display is attached hereto as Exhibit 6.

40. As illustrated in **Figure 1** above, Additech's advertisements at the pump include pictures illustrating the cleaning power of its additives. The "gunk" or carbon deposits cover the backside of the intake valve in the "before Additech" photo and in the "after Additech" photo, the backside of the valve is pristine.

41. The picture of the intake valve unambiguously and deceptively represents that all carbon deposits will be removed with a single application of Additech's additives.

42. Additech's webpage doubles down on these representations. The home page of Additech's website claims that its "state-of-the-art fuel additives" clean your engine, increase fuel efficiency, and reduce the need for repairs, ensuring "your car will run in exceptional condition"¹⁰ The home page bolsters these claims by representing that Additech's products are "created by the world's top scientists" and are "scientifically proven to improve fuel economy."

43. The product page for Additech's Fuel System Cleaner represents further that the Fuel System Cleaner "restores lost gas mileage," "restores power and performance," "protects against costly repairs," and "restores renewed life to your car or truck." The product page goes on, purporting to explain how the Fuel System Cleaner achieves these results:

Additech fuel system cleaner has a unique triple detergent technology that deep cleans your engine to remove harmful sludge and corrosive deposits from intake valves and fuel injectors. Additech also lubricates to enhance the friction fighting properties of your motor oil and provide added protection against corrosion caused by ethanol. Performance, protection, better mileage and longer running engines, that's Additech.¹¹

44. Additech represents that Diesel Guard, which it began selling in March of 2017, provides similar benefits for diesel engines. The Diesel Guard product page claims that Diesel Guard "deep cleans diesel engines," "adds miles to engine life," "minimizes friction,"

¹⁰ ADDITECH, <https://additech.com/> (last visited Dec. 11, 2018).

¹¹ ADDITECH, <http://additech.com/fuel-system-cleaner/> (last visited Dec. 11, 2018).

1 “maximizes mileage,” “removes corrosion” and “improves performance and cold starts,”
 2 “keep[ing] you out of the repair shop.”¹²

3 45. Additech’s advertising makes several false and misleading statements about the
 4 effectiveness of its products, preying on consumers unfamiliar with how engines function. In
 5 the approximately 50% of new vehicles equipped with diesel or GDI engines, intake valves and
 6 manifolds will not be cleaned at all due to the structure of the engine. And even if some benefit
 7 may accrue in a non-GDI engine, Additech’s advertisements showing a single application
 8 completely removing intake valve deposits as depicted in **Figure 1** are false and have no basis
 9 in fact.

10 46. Even worse, if the intake valve is covered in carbon deposits as depicted in
 11 **Figure 1**, some of the additive would be converted to exhaust gas effluent and emitted into the
 12 environment through the exhaust pipes. Under these conditions, the use of Additech’s additives
 13 can actually *increase* harmful emissions.

14 47. Additech’s claims that both of its products are scientifically proven to improve
 15 fuel economy are similarly misleading.

16 48. In 2008, the National Center for Vehicle Emissions Control and Safety at
 17 Colorado State University tested the effectiveness of Additech’s Fuel System Cleaner.
 18 Specifically, the additive was tested to determine the accuracy of Additech’s claims that its
 19 Fuel System Cleaner (1) restores lost gas mileage; and (2) is guaranteed to maximize gas
 20 mileage. Although the test used only one vehicle, the increase in gas mileage after using
 21 Additech’s Fuel System Cleaner was statistically insignificant.¹³

22 49. Because its advertisements are displayed at the pump, every purchaser is
 23 exposed to Additech’s false and misleading representations. As a consequence of the ease of
 24 delivery, consumers are highly susceptible to relying on those representations. The more
 25

26 ¹² ADDITECH, <https://additech.com/diesel-guard/> (last visited Dec. 11, 2018).

27 ¹³ <https://denver.cbslocal.com/2011/03/09/cbs4-puts-fuel-additives-to-the-test/>.

1 detailed information provided on Additech's website only compounds the deceptive nature of
 2 its on-site advertising, lending unwarranted credibility to Additech's claims by assuring
 3 consumers that its additives are created by the world's top scientists and scientifically proven to
 4 be effective.

5 50. The deceptive representations on Additech's website and contained in its on-site
 6 advertising have injured thousands of Washington consumers, inducing them to purchase fuel
 7 additives that do not, and in most cases cannot, provide the benefits Additech claims they will.

8 **D. Plaintiff Nick Lowry.**

9 51. Nick Lowry lives in Edmonds, Washington and owns a 1999 Toyota Corolla.

10 52. Mr. Lowry first learned about Additech's products when he saw Additech's on-
 11 site advertising while refueling at a Fred Meyer gas station in Lynnwood, Washington—located
 12 at 4615 196th Street SW.

13 53. Mr. Lowry initially purchased Additech's Fuel System Cleaner based on the
 14 representations made at the pump, including that the Fuel System Cleaner reduces harmful
 15 emissions, improves gas mileage, and cleans intake valves and other engine components.

16 54. After his first purchase, Mr. Lowry reviewed the representations on Additech's
 17 website, which convinced him to purchase Additech's Fuel System Cleaner for his Corolla on
 18 two other occasions.

19 55. Although Mr. Lowry purchased Additech's Fuel System Cleaner at the
 20 Lynnwood Fred Meyer on at least three occasions in the last year, it did not deliver the benefits
 21 promised by Additech. Even after several applications of the Fuel System Cleaner, Mr. Lowry
 22 observed no increase in gas mileage or any difference in the performance or maintenance
 23 requirements of his vehicle.

24 **V. CLASS ALLEGATIONS**

25 56. Class Definition. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings
 26 this lawsuit as a class action on behalf of the following Washington State Class:
 27

1 All persons who purchased Additech's Fuel System Cleaner or
 2 Diesel Guard products in Washington State, at any time after
 3 January 7, 2015.

4 Excluded from the proposed Class are Additech; any affiliate, parent, or subsidiary of
 5 Additech; any entity in which Additech has a controlling interest; any officer, director, or
 6 employee of Additech; any successor or assign of Additech; anyone employed by counsel in
 7 this action; any judge to whom this case is assigned, his or her spouse, or members of the
 8 judge's staff; and anyone who purchased Additech's Fuel System Cleaner or Diesel Guard
 9 products for the purpose of resale.

10 57. Numerosity. On information and belief, there are more than 1,000 people in the
 11 proposed Class.

12 58. Commonality. There exist questions of law and fact common to Plaintiff and the
 13 proposed Class, including but not limited to:

14 a. Whether Defendant's Fuel System Cleaner and Diesel Guard products
 15 improve gas mileage as represented in its advertising;

16 b. Whether Defendant's Fuel System Cleaner and Diesel Guard products
 17 clean engine components as represented in its advertising;

18 c. Whether Defendant's Fuel System Cleaner and Diesel Guard products
 19 reduce maintenance requirements as represented in its advertising;

20 d. Whether Defendant's Fuel System Cleaner and Diesel Guard products
 21 reduce harmful emissions as represented in its advertising;

22 e. Whether Defendant's Fuel System Cleaner and Diesel Guard products
 23 enhance engine performance as represented in its advertising;

24 f. Whether Defendant's practices are unfair or deceptive acts or practices
 25 under the CPA; and

26 g. The nature and extent of Class-wide injury and the measure of
 27 compensation for such injury.

1 59. Typicality. Plaintiff's claims are typical of the claims of the Class. They arise
 2 out of the same common course of conduct by Defendant and are based on the same legal and
 3 remedial theories. Class members were all exposed to substantially similar false and/or
 4 misleading advertising created by Defendant and were induced to purchase Defendant's
 5 products as a result.

6 60. Adequacy of Representation. Plaintiff is an appropriate representative party for
 7 the Class and will fairly and adequately protect the interests of the Class. Plaintiff understands
 8 and is willing to undertake the responsibilities of acting in a representative capacity on behalf
 9 of the proposed Class. Plaintiff will fairly and adequately protect the interests of the Class and
 10 has no interests that directly conflict with interests of the Class. Plaintiff has retained competent
 11 and capable attorneys who are experienced trial lawyers with significant experience in complex
 12 and class action litigation, including consumer class actions. Plaintiffs and their counsel are
 13 committed to prosecuting this action vigorously on behalf of the Class and have the financial
 14 resources to do so.

15 61. Predominance. Defendant has engaged in a standard practice using false and/or
 16 misleading advertising to promote its products. The advertising to which Plaintiff was exposed
 17 is substantially similar, if not identical, to the advertising seen by the Class. Because
 18 Defendant's liability hinges on the legality of advertising to which each Class member was
 19 exposed, the common issues arising from this conduct predominate over any individual issues.
 20 Adjudication of these common issues in a single action has important and desirable advantages
 21 of judicial economy.

22 62. Superiority. Plaintiff and members of the Class have suffered harm and
 23 damages as a result of Defendant's unlawful and wrongful conduct. Absent a class action,
 24 however, most Class members likely would find the cost of litigating their claims prohibitive.
 25 Class treatment is superior to multiple individual suits or piecemeal litigation because it
 26 conserves judicial resources, promotes consistency and efficiency of adjudication, provides a
 27

forum for small claimants, and deters illegal activities. The members of the Class are readily identifiable from Defendant's records and there will be no significant difficulty in the management of this case as a class action.

63. Injunctive Relief. Defendant's conduct is uniform to all members of the Class. Defendants have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or declaratory relief is appropriate with respect to the Class as a whole.

VI. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86, ET SEQ. – NON-PER SE DECEPTIVE BUSINESS PRACTICES

64. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

65. Plaintiff and Class members are "persons" within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(1).

66. Defendant is a "person" within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(1), and conducts "trade" and "commerce" within the meaning of the Washington Consumer Protection Act, RCW § 19.86.010(2).

67. The conduct described above and throughout this Complaint is deceptive within the meaning of the Washington Consumer Protection Act, RCW 19.86.010, *et seq.*

68. Defendant engages in deceptive acts or practices in the conduct of its business by engaging in a pattern or practice of omitting, concealing, and/or misrepresenting material facts regarding the efficacy, quality, characteristics, and/or benefits of its Fuel System Cleaner and Diesel Guard products to induce consumers to purchase these products.

69. Defendant's deceptive acts or practices have repeatedly occurred in trade or commerce within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(2) and RCW 19.86.020, and were and are capable of deceiving a substantial portion of the public.

1 The acts complained of herein are ongoing and/or have a substantial likelihood of being
2 repeated.

3 70. Defendant's deceptive acts or practices have impacted the public interest
4 because they have injured Plaintiff and thousands of other persons, and have the capacity to
5 injure thousands more. Defendant deceived Plaintiff and Class members into believing that its
6 Fuel System Cleaner and Diesel Guard products provide engine cleaning, fuel efficiency,
7 performance, emissions, and maintenance related benefits these products do not provide.

8 71. As a direct and proximate result of Defendant's deceptive acts or practices,
9 Plaintiff and Class members have suffered injury in fact and lost money. Defendant's conduct
10 has injured the property of Plaintiff and the other members of the Class, in that Defendant's
11 conduct induced Plaintiff and Class members to spend money and purchase products that do
12 not provide the benefits advertised by Defendant.

13 72. Plaintiff and Class members are therefore entitled to legal relief against
14 Defendant, including recovery of actual damages, treble damages, attorneys' fees, costs of suit,
15 and such further relief as the Court may deem proper.

16 73. Plaintiff and Class members are also entitled to injunctive relief in the form of
17 an order prohibiting Defendant from engaging in the alleged misconduct and such other
18 equitable relief as the Court deems appropriate, including, but not limited to, disgorgement, for
19 the benefit of Class members, of all or part of the ill-gotten profits received from Defendant's
20 unlawful scheme.

21 **SECOND CLAIM FOR RELIEF**
22 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86**
***ET SEQ.* – NON-PER SE UNFAIR BUSINESS PRACTICES**

23 74. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth
24 herein.

25 75. Plaintiff and Class members are "persons" within the meaning of the
26 Washington Consumer Protection Act, RCW 19.86.010(1).

1 76. Defendant is a “person” within the meaning of the Washington Consumer
2 Protection Act, RCW 19.86.010(1), and conducts “trade” and “commerce” within the meaning
3 of the Washington Consumer Protection Act, RCW § 19.86.010(2).

4 77. The conduct described above and throughout this Complaint is unfair within the
5 meaning of the Washington Consumer Protection Act, RCW 19.86.010, et seq.

6 78. Defendant engages in unfair acts or practices in the conduct of its business by
7 engaging in a pattern or practice of omitting, concealing, and/or misrepresenting material facts
8 regarding the efficacy, quality, characteristics, and/or benefits of its Fuel System Cleaner and
9 Diesel Guard products to induce consumers to purchase these products.

10 79. Defendant’s systematic practices are unfair because these acts or practices: (1)
11 cause substantial financial injury to Plaintiff and Class members; (2) are not outweighed by any
12 countervailing benefits to consumers or competitors; and (3) is not reasonably avoidable by
13 consumers.

14 80. Defendant’s systematic practice of misrepresenting the benefits provided by its
15 Fuel System Cleaner and Diesel Guard products is unfair because this act or practice is
16 immoral, unethical, oppressive, and/or unscrupulous.

17 81. Defendant’s deceptive acts or practices have repeatedly occurred in trade or
18 commerce within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(2)
19 and RCW 19.86.020.

20 82. Defendant’s unfair acts or practices impact the public interest because they have
21 injured Plaintiff and hundreds of Washington residents, and have the capacity to injure
22 hundreds more. Defendant’s acts or practices unfairly induced Plaintiff and the Class to
23 purchase Defendant’s Fuel System Cleaner and Diesel Guard products even though these
24 products do not provide the engine cleaning, fuel efficiency, performance, emissions, and
25 maintenance related benefits advertised by Defendant.
26
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83. As a direct and proximate result of Defendant's unfair acts or practices, Plaintiff and Class members suffered injury in fact and lost money. Defendant's conduct has injured the property of Plaintiff and the other members of the Class, in that Defendant's conduct induced Plaintiff and Class members to spend money and purchase a product that does not provide the benefits advertised by Defendant.

84. Plaintiff and Class members are therefore entitled to legal relief against Defendant, including recovery of actual damages, treble damages, attorneys' fees, costs of suit, and such further relief as the Court may deem proper.

85. Plaintiff and Class members are also entitled to injunctive relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct and such other equitable relief as the Court deems appropriate, including, but not limited to, disgorgement, for the benefit of Class members, of all or part of the ill-gotten profits received from Defendant's unlawful scheme.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the proposed Class be certified under Civil Rule 23 and judgment be entered against Defendant:

A. For injunctive and declaratory relief:

1. Declaring Defendant's deceptive and/or unfair acts or practices described in this complaint to be unlawful, and

2. Prohibiting Defendant from promoting its fuel additive products using advertising that expressly or impliedly represents that the additives provide engine cleaning, fuel efficiency, performance, emissions, or maintenance related benefits without reliable scientific evidence establishing that its products provide such benefits;

B. For an award to Plaintiff and Class members of actual damages, treble damages, costs and attorneys' fees under RCW 19.86.090; and

C. For such other and further relief as may be just and equitable.

1 RESPECTFULLY SUBMITTED AND DATED this 8th day of January, 2019.

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