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13
 14 **United States District Court**
 15 **Southern District of California**

16 **Gaurav Sharma and Baily Brownell,**
 17 individually, and on behalf of
 18 themselves and all others similarly
 19 situated,

20 Plaintiffs,

21 v.

22 **Volkswagen AG; Volkswagen**
Group of America, Inc.; Audi AG;
Audi of America, LLC; Dr. Ing. h.c.
 23 **F. Porsche AG; Porsche Cars of**
North America, Inc.; Daimler AG;
Mercedes-Benz USA, LLC;
 24 **Mercedes-Benz U.S. International,**
Inc.; Mercedes-Benz Vans, LLC;
 25 **Bayerische Motoren Werke AG; and**
BMW of North America, LLC,

26 Defendants.

27 Case No. '17CV1678 MMAJLB

**Class Action Complaint and
Complaint for Damages**

Demand for Jury Trial

1 Plaintiffs Gaurav Sharma and Baily Brownell, acting on behalf of
2 themselves and all others similarly situated, bring this action for damages and
3 equitable relief against defendants Volkswagen AG, Volkswagen Group of
4 America, Inc., Audi AG, Audi of America, LLC, Dr. Ing. h.c. F. Porsche AG,
5 Porsche Cars of North America, Inc., Daimler AG, Mercedes-Benz USA, LLC,
6 Bayerische Motoren Werke AG, and BMW of North America, LLC
7 (collectively, “Defendants” or the “German Auto Cartel”).

8 1. Competition is the cornerstone of our free market economy.
9 Competition between firms benefits individual consumers and society as a
10 whole, as market participants are incentivized to outdo their competitors. In
11 theory, this keeps prices low and drives technological innovation.
12 Competition is so important to our free market economy that a network of
13 laws on the federal and state level protect it. Within each industry,
14 competitors are expected to vie for customers through innovative technology,
15 distinguishing luxuries, and price, among others. The auto industry is no
16 different – or at least it’s not supposed to be.

17 2. Despite repeated public affirmations in favor of competition by
18 their respective CEOs, German automakers – Daimler, Volkswagen, BMW,
19 and their subsidiaries, including Audi and Porsche – have been colluding for
20 decades in a variety of anti-competitive ways, including by agreeing to limit
21 the maximum speed at which soft-top convertibles can be opened and by
22 agreeing to limit the size of urea tanks in diesel-engine cars. These agreements
23 freed up time and capital for the German Auto Cartel while allowing them to
24 charge consumers a premium for their products without the burden and
25 expense of competitive innovation.

26 3. According to a *mea culpa* letter by Volkswagen to governmental
27 cartel authorities in Europe, the conspiracy dates back to 1990s, spanning
28

1 dozens of cooperative working groups and thousands of meetings.¹

2 4. German periodical *Der Spiegel* first broke the news of the massive
3 conspiracy on July 21, 2017, concluding that “Daimler, BMW, Audi, Porsche
4 and Volkswagen no longer compete with one another. Instead, they secretly
5 cooperate, very closely, in fact, in the same way one would normally expect of
6 the subsidiaries of a single company to work together, as something **like a**
7 **‘German Cars Inc.’ – or a cartel.**”²

8 5. As a result of the German Auto Cartel’s anticompetitive and
9 unlawful conduct, Plaintiffs and the Class paid unfairly inflated prices for
10 their vehicles. The Cartel’s activities substantially affected interstate trade and
11 commerce in the United States, causing injury to Plaintiffs and the Class.

12 PARTIES

13 Plaintiff Gaurav Sharma

14 6. Plaintiff Gaurav Sharma is a resident of San Diego, CA. Plaintiff
15 Gaurav Sharma purchased a new Mercedes C230, model year 2006, from
16 Mercedes Benz of South Bay in Torrance, CA. Subsequently, he purchased a
17 certified pre-owned BMW X5, model year 2008, from Santa Monica BMW.
18 Each time, Mr. Sharma chose his vehicle because he expected unparalleled
19 quality and reliability from the premium luxury brands.

20 Plaintiff Baily Brownell

21 7. Plaintiff Baily Brownell is a resident of San Mateo, California. She

22
23
24 ¹ As written in the official English language translation. Frank Dohmen and
25 Dietmar Hawranek, translated by Christopher Sultan, “The Cartel: Collusion
26 Between Germany’s Biggest Carmakers,” *Spiegel Online*, July 27, 2017,
27 [http://www.spiegel.de/international/germany/the-cartel-collusion-
between-germany-s-biggest-carmakers-a-1159471.html](http://www.spiegel.de/international/germany/the-cartel-collusion-between-germany-s-biggest-carmakers-a-1159471.html). All cites in this
Complaint will be to the English language version.

28 ² *Id.*

1 leased a 2017 Volkswagen Jetta from Serramonte Volkswagen in Colma,
2 California on or about June 11, 2017. Ms. Brownell selected a Jetta because she
3 expected a reliable and efficient automobile, and in part because she expected
4 great value and improved performance from a company that had recently
5 weathered such a major scandal. It did not occur to her that Volkswagen's
6 "Clean Diesel" cheating was only the tip of the proverbial iceberg.

7 **The Volkswagen, Audi, and Porsche defendants**

8 8. **Volkswagen AG:** Volkswagen AG ("VW AG") is a German
9 corporation with its principal place of business in Wolfsburg, Germany. VW
10 AG is one of the largest automobile manufacturers in the world, and is in the
11 business of designing, developing, manufacturing, and selling automobiles.
12 VW AG is the parent corporation of VW America, Audi AG, and Porsche AG.
13 Those three, together with defendants BMW AG and Daimler AG, have been
14 known as the German Five. The term is something of a misnomer now, in
15 light of VW AG's acquisitions of two of the five.

16 9. According to VW AG, it sold 10.14 million cars worldwide in 2014
17 – including 6.12 million VW-branded cars, 1.74 million Audi-Branded cars,
18 and 189,849 Porsche-branded cars. Combined with its other brands, VW AG
19 boasts a 12.9% share of the worldwide passenger car market. VW AG's sales
20 revenue in 2014 totaled €202 billion (approximately \$221 billion) and sales
21 revenue in 2013 totaled €197 billion (approximately \$215 billion). At €12.7
22 billion (approximately \$13.9 billion), VW AG generated its highest ever
23 operating profit in fiscal year 2014, beating the previous record set in 2013 by
24 €1.0 billion (approximately \$1.1 billion).

25 10. VW AG engineered, designed, developed, manufactured, and
26 distributed the Class vehicles in concert with the other defendants and in
27 contravention of established free market principles. VW AG also developed,
28 reviewed, and approved the marketing and advertising campaigns designed

1 to sell the Class Vehicles.

2 **11. Volkswagen Group of America, Inc.:** Volkswagen Group of
3 America, Inc. (“VW America”) is a New Jersey corporation with its principal
4 place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia
5 20171. VW America is a wholly-owned subsidiary of Volkswagen AG, and it
6 engages in business, including the advertising, marketing and sale of
7 Volkswagen automobiles, in all 50 states. In 2014 alone, VW America sold
8 552,729 vehicles from its 1,018 dealer locations in all 50 states, including 95,240
9 TDI® “clean” diesel vehicles.

10 **12. Audi AG:** Defendant Audi AG is a German corporation with its
11 principal place of business in Ingolstadt, Germany. Audi AG is the parent of
12 Audi of America, LLC and a subsidiary of the Audi Group, which is a wholly
13 owned subsidiary of Volkswagen AG. Audi AG directly controls and directs
14 the actions of Audi of America, LLC. Audi AG designs, develops,
15 manufacturers, and sells luxury automobiles. According to Audi AG, the
16 Audi Group sold more than 200,000 vehicles in the United States in 2015.

17 **13. Audi of America, LLC:** Defendant Audi of America, LLC (“Audi
18 America”) is a Delaware limited liability company with its principal place of
19 business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171.
20 Audi America is a citizen of Delaware and Virginia. See 28 U.S.C. §
21 1332(d)(10). Audi America is a wholly owned United States subsidiary of
22 Audi AG, and it engages in business, including the advertising, marketing,
23 and sale of Audi automobiles, in all 50 states.

24 **14. Dr. Ing. h.c. F. Porsche AG:** Dr. Ing. h.c. F. Porsche AG (“Porsche
25 AG”) is a German corporation with its principal place of business located in
26 Stuttgart, Germany. Porsche AG designs, develops, manufacturers, and sells
27 luxury automobiles. Porsche AG is a wholly-owned subsidiary of VW AG.
28 According to Porsche AG, it sold 187,208 cars worldwide in 2014, with sales

1 revenues in 2014 totaling €17.2 billion (approximately \$18.8 billion). Porsche
2 AG's operating profit in fiscal year 2014 was €2.79 billion (\$2.97 billion).

3 15. Porsche AG developed its cars in part in concert with the
4 remaining defendants, and exported its vehicles with the understanding that
5 they would be sold in the United States. Porsche AG also developed,
6 reviewed, and approved the marketing and advertising campaigns designed
7 to sell its Class Vehicles.

8 16. **Porsche Cars North America, Inc.:** Porsche Cars North America,
9 Inc. ("Porsche America") is a Delaware corporation with its principal place of
10 business located at 1 Porsche Drive, Atlanta, Georgia 30354. Porsche America
11 is a wholly-owned U.S. subsidiary of Porsche AG, and it engages in business,
12 including the advertising, marketing and sale of Porsche automobiles, in all 50
13 states. According to Porsche AG, it sold 47,007 automobiles in 2014. Porsche
14 America now maintains a network of 189 dealers nationwide.

15 **The BMW defendants**

16 17. **Bayerische Motoren Werke AG:** Defendant Bayerische Motoren
17 Werke AG ("BMW AG") is a German holding company and vehicle
18 manufacturer. BMW AG is headquartered in Germany. BMW AG, together
19 with its subsidiaries, develops, manufactures, and sells cars and motorcycles
20 worldwide, including the German Luxury Vehicles at issue that were
21 purchased throughout the United States, including this district during the
22 Class Period.

23 18. **BMW North America, LLC:** Defendant BMW North America, LLC
24 is a Delaware limited liability corporation with its principal place of business
25 in Woodcliff Lake, New Jersey. BMW of North America is the United States
26 importer of BMW vehicles.

1 **The Daimler defendants**

2 19. **Daimler AG:** Defendant Daimler AG is a German corporation
3 with its principal place of business in Stuttgart, Germany, and is the parent
4 company of Mercedes-Benz USA, LLC (which acts as the sole distributor for
5 Mercedes-Benz vehicles in the United States). Daimler AG designs, develops,
6 manufactures, distributes and sells German Diesel Passenger Vehicles, which
7 were purchased by consumers throughout the United States, including in this
8 District during the Class Period. Daimler AG directs the activities of its
9 subsidiaries, which act as its agents in the selling of German Diesel Passenger
10 Vehicles, including throughout the United States during the Class Period.

11 20. **Mercedes-Benz USA, LLC:** Defendant Mercedes-Benz USA, LLC
12 is a Delaware limited liability corporation with its principal place of business
13 in Atlanta, Georgia; it designs, develops, manufactures, distributes and sells
14 German Diesel Passenger Vehicles, which were purchased by consumers
15 throughout the United States, including in this District during the Class
16 Period. Mercedes-Benz USA, LLC operates a regional sales office, a parts
17 distribution center, and a customer service center in New Jersey.

18 21. **Mercedes-Benz U.S. International, Inc.:** Defendant Mercedes-
19 Benz U.S. International, Inc. is a corporation organized and existing under the
20 laws of Alabama, with its principal place of business in Vance, Alabama; it
21 manufactures Daimler-Mercedes diesel vehicles distributed and sold
22 throughout the United States during the Class Period. Mercedes-Benz U.S.
23 International, Inc. is a wholly-owned subsidiary of Daimler AG. 17. Defendant
24 Mercedes-Benz Vans, LLC is a Delaware limited liability corporation with its
25 principal place of business in Ladson, South Carolina; it also manufactures
26 Daimler-Mercedes diesel vehicles distributed and sold throughout the United
27 States during the Class Period. Mercedes-Benz Vans, LLC is a wholly owned
28 subsidiary of Daimler AG.

1 because Plaintiff resides in San Diego, California. This Court has personal
2 jurisdiction over each Defendant pursuant to 18 U.S.C. § 1965(b) & (d), and/or
3 California Code of Civil Procedure section 410.10. This Court has personal
4 jurisdiction over Defendants because they have minimum contacts with the
5 United States, this judicial district, and this State, and intentionally availed
6 themselves of the laws of the United States and this state by distributing,
7 testing, selling, leasing, and/or providing warranties for the German Auto
8 Cartel's vehicles in this State and District. At least in part because of
9 Defendants' misconduct as alleged in this Complaint, Class Vehicles ended up
10 on this state's roads and in dozens of dealerships across the state.

11 27. Venue is proper in this Court under 28 U.S.C. § 1391 because
12 Defendants advertise, market, lease, and sell a substantial number of
13 automobiles in this District and have dealerships in this District. Venue is also
14 proper in this Court because Defendants caused harm to Class Members
15 residing in this District.

16 28. Alternatively, there is jurisdiction over foreign Defendants
17 pursuant to Federal Rule of Civil Procedure 4(k)(2).

18 29. In connection with German diesel vehicles, Defendants engaged in
19 conduct both inside and outside of the United States that caused direct,
20 substantial and reasonably foreseeable and intended anti-competitive effects
21 upon interstate commerce within the United States, and such conduct gives
22 rise to the claims of Plaintiff and the members of the Class. Also, German
23 diesel passenger vehicles manufactured abroad by Defendants and sold in the
24 United States are goods brought into the United States for sale, and therefore
25 are import commerce.

SPECIFIC FACTUAL ALLEGATIONS

The German auto industry begets the German Auto Cartel

1
2
3 30. The German Auto Cartel can trace its roots to the protectionist
4 policies of Otto von Bismarck in the 1870s.³ Cartel behavior was encouraged
5 in Germany, as German executives were taught to see their competition in
6 terms of nationality. High tariffs kept international competition out of
7 Germany's own markets, while German industry cartels would work
8 collaboratively to compete globally.

9 31. The members of the Germany Auto Cartel have always had a cozy
10 relationship with one another. Modern-day Daimler AG is the oldest member
11 of the German Auto Cartel. Separately, Carl-Friedrich Benz in 1886 and
12 Gottlieb Daimler in 1887 built the first motor vehicles in Germany. Their
13 respective companies merged in 1926.

14 32. Audi's origins include the founding of a predecessor company by
15 August Horch, A. Horch & Cie, in 1899. The first Audi vehicle was produced
16 in 1910.

17 33. BMW was next to come into existence, with its predecessor aircraft
18 company founded in 1916.

19 34. Porsche was founded in 1931. Initially, it developed and consulted
20 on products but did not produce cars under its own name. One of its first
21 major projects came from the German government: to develop a "People's
22 Car" for the masses in Germany – what would become the iconic Volkswagen
23 Beetle. Adolf Hitler became involved in the project in 1934, ordering
24 construction of a new state-run factory and emphasizing that Germans should
25

26 ³ Leonid Bershidsky, "Germany's Auto Industry is Built on Collusion,"
27 *Bloomberg View*, July 31, 2017,
28 <https://www.bloomberg.com/view/articles/2017-07-31/germany-s-auto-industry-is-built-on-collusion>.

1 have at least equal access to automobiles as compared to Americans. Mass
2 production of the first Beetles had barely started when World War II began,
3 and production was shifted to emphasize military versions of the vehicle.
4 After the war, the Beetle went on to become one of the best – and longest –
5 selling cars in the world. Yet, Volkswagen owes its own existence to
6 nationalistic and anti-competitive behaviors taken to the extreme.

7 35. Audi’s current emblem is also a nod to its cartel past, as the four
8 rings represent four auto companies that combined to become Auto Union
9 AG, Chemnitz (“Auto Union”), in 1932. Each member brand continued to sell
10 automobiles under its own name, but collaborated on technology.

11 36. Auto Union, in turn, was completely acquired by then-Daimler-
12 Benz in 1959. The interrelatedness continued when, six years later,
13 Volkswagen bought Auto Union from Daimler-Benz.

14 37. Porsche and Volkswagen, meanwhile, have always had a close,
15 sometimes unclear, relationship. By way of merger, Volkswagen and Porsche
16 became an integrated automotive group in 2011.

17 The German Auto Cartel is exposed

18 38. The first cracks in the armor of the German Auto Cartel were
19 arguably the series of diesel scandals, starting with Volkswagen’s infamous
20 “Dieselgate.” But the truth came to light when *Der Spiegel* obtained a copy of
21 the brief Volkswagen submitted to the European Commission and German
22 Federal Cartel Office, tattling on its fellow co-conspirators. The resulting
23 article, first published in German on July 21, 2017, was damning:

24 The collusion over diesel engines is the most spectacular case,
25 but only one of many in which the five German carmakers may
26 have violated cartel law. **The system of collusion encompassed
almost all areas of automobile development.**⁴

27 _____
28 ⁴ Dohmen, *supra* note 1.

1 39. As more fully detailed below, the German Auto Cartel worked
2 collaboratively to develop technology, established joint technical standards,
3 and agreed not to compete against one another in certain fields of innovation.

4 40. In Volkswagen's estimation, there have been more than 1000
5 meetings in the past five years alone. Working groups among the Cartel
6 included "braking control systems, seating systems, air suspensions, clutches,
7 gasoline engines and diesel engines."

8 41. The Cartel was extremely effective, operating since at least the
9 1990s. Those who sought to compete with the Cartel for the market of
10 European-engineered cars could barely find a toe-hold. Saab was forced to
11 shutter completely. Ford, for example, tried to compete by acquiring the
12 Jaguar and Land Rover brands. Unsatisfied with the brands' performance,
13 Ford sold them to Tata Motors, an Indian corporation.

14 42. Some former competitors retreated from the United States market
15 and found it difficult or impossible to return, like Renault. While Fiat and Alfa
16 Romeo have managed to reappear stateside with the assistance of the
17 restructured FCA US LLC (parent: Fiat Chrysler N.A.), they have made no
18 noticeable impact on Defendants' market share.

19 43. Another fate awaited other former competitors of the German
20 Auto Cartel: some were swallowed whole by the Cartel. BMW now owns
21 Mini; Volkswagen has Lamborghini and Bentley.

22 44. The scope and longevity of the Cartel is astonishing. Antitrust law
23 rewards tattling, as the first to come clean receives the most leniency in fines.
24 While *Der Spiegel* initially reported that Volkswagen was the first to break
25 with the pack, subsequent reports suggest Daimler may have beaten it to the
26 punch.⁵

27 _____
28 ⁵ Bershidsky, *supra* note 3.

1 **The German Auto Cartel agrees not to compete on urea tank size in**
2 **diesel vehicles**

3 45. While other auto companies have increasingly looked for different
4 approaches to environmentally friendly vehicles, like hydrogen fuel cells, the
5 German Auto Cartel stuck with diesel. Diesel vehicles require a urea mixture
6 to process the emissions from the engine. Audi prepared a study that showed
7 a minimum tank size of 19L was needed to meet U.S. standards. Daimler,
8 Volkswagen, and BMW agreed with the results.

9 46. But big tanks would have been expensive, and taken space away
10 from selling points, like fancy stereos or storage space. So, in 2010, the
11 companies agreed to 8L tanks for the European market and 16L tanks for the
12 U.S. market. This agreement was the result of many meetings between the
13 members of the Cartel.

14 47. It soon became clear that the smaller tanks were inadequate,
15 resulting in Cartel vehicles being unable to comply with emissions standards.
16 Rather than increasing tank size to accommodate the amount of urea
17 needed – an obvious solution – the Cartel stuck to its conspiracy. Some began
18 using technological cheats to fool regulators into believing their cars were
19 compliant, a decision that would cost the companies dearly when it became
20 publicly known, but that, for many years, allowed them to reap great profits.

21 48. The Cartel internally acknowledged its anti-competitive behavior,
22 with Audi warning against “an arms race with regard to tank sizes, which we
23 should continue to avoid at all costs.”⁶

24 49. Indeed, standardizing tank sizes allowed for the Cartel to focus its
25 resources elsewhere and charge consumers a premium for so-called “eco-
26 friendly” technology. The companies knowingly agreed to inadequate tank
27 _____

28 ⁶ Dohmen, supra note 1.

1 sizes to the detriment of consumers, the general public, and the planet.

2 **The German Auto Cartel agrees not to compete on soft-top convertible**
 3 **innovation**

4 50. The Cartel exploited similar savings with agreements on soft-top
 5 convertible technology. One possible front for innovation was the maximum
 6 speed at which a soft top convertible could be safely opened and closed – a
 7 soft top that goes up with a push of a button at the first sign of rain while
 8 cruising on the highway could be a major selling point for potential buyers.

9 51. The Cartel decided not to apply resources there. “No arms race
 10 when it comes to speeds,” minutes from one of the working group for
 11 mechanical attachments’ meetings read.

12 52. As a result, no soft-top convertibles made by the German Auto
 13 Cartel can open or close when the vehicle is moving faster than 55 kilometers
 14 per hour.⁷

15 **The German Auto Cartel agrees to follow joint technical standards**

16 53. Another way the Cartel facilitated its own success was by
 17 establishing and agreeing to follow joint technical standards for a variety of
 18 aspects of vehicle design.⁸ “The five manufacturers had jointly established
 19 ‘technical standards’ and had agreed to use ‘only certain technical solutions’
 20 in new vehicles.”⁹

21 54. Plaintiff and the Class have been harmed as a result of the Cartel’s
 22 actions. Members of the Class would not have purchased the Class Vehicles,
 23 and/or would have paid substantially less for their vehicle. The loss of value
 24 to the Class Vehicles is directly attributable to Defendants’ fraudulent and
 25

26 ⁷ Dohmen, *supra* note 1.

27 ⁸ *Id.*

28 ⁹ *Id.*

1 deceptive actions. The value of the Class Vehicles is furthered decreased by
2 this actual harm and also the harm to the brand.

3 CLASS ACTION ALLEGATIONS

4 55. Plaintiffs bring this action as a class action pursuant to Federal
5 Rule of Civil Procedure 23 on behalf of themselves and all others similarly
6 situated. Plaintiffs seek to represent the following Classes:

7 **Nationwide Class**

8 All persons or entities in the United States who indirectly
9 purchased or leased a Class Vehicle¹⁰ from any Defendant
during the Class Period.

10 **Alabama Class**

11 All current and former owners of Class Vehicles who
12 reside in the State of Alabama and who indirectly
13 purchased or leased Class Vehicles in Alabama during the
Class Period.

14 **Arizona Class**

15 All current and former owners of Class Vehicles who
16 reside in the State of Arizona and who indirectly
17 purchased or leased Class Vehicles in Arizona during the
Class Period.

18 **California Class**

19 All current and former owners of Class Vehicles who
20 reside in the State of California and who indirectly
21 purchased or leased Class Vehicles in California during the
Class Period.

22 **District of Columbia Class**

23 All current and former owners of Class Vehicles who
24 reside in the District of Columbia and who indirectly
25 purchased or leased Class Vehicles in D.C. during the
Class Period.

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27 ¹⁰ "Class vehicle" includes all vehicles designed and/or sold by any
28 Defendant, including subsidiaries' vehicles, from January 1, 1995 - July 21,
2017.

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Illinois Class

All current and former owners of Class Vehicles who reside in the State of Illinois and who indirectly purchased or leased Class Vehicles in Illinois during the Class Period.

Iowa Class

All current and former owners of Class Vehicles who reside in the State of Iowa and who indirectly purchased or leased Class Vehicles in Iowa during the Class Period.

Kansas Class

All current and former owners of Class Vehicles who reside in the State of Kansas and who indirectly purchased or leased Class Vehicles in Kansas during the Class Period.

Maine Class

All current and former owners of Class Vehicles who reside in the State of Maine and who indirectly purchased or leased Class Vehicles in Maine during the Class Period.

Michigan Class

All current and former owners of Class Vehicles who reside in the State of Michigan and who indirectly purchased or leased Class Vehicles in Michigan during the Class Period.

Minnesota Class

All current and former owners of Class Vehicles who reside in the State of Minnesota and who indirectly purchased or leased Class Vehicles in Minnesota during the Class Period.

Mississippi Class

All current and former owners of Class Vehicles who reside in the State of Mississippi and who indirectly purchased or leased Class Vehicles in Mississippi during the Class Period.

Nebraska Class

All current and former owners of Class Vehicles who reside in the State of Nebraska and who indirectly purchased or leased Class Vehicles in Nebraska during the Class Period.

New Hampshire Class

All current and former owners of Class Vehicles who reside in the State of New Hampshire and who indirectly

1 purchased or leased Class Vehicles in New Hampshire
during the Class Period.

2 **New Mexico Class**

3 All current and former owners of Class Vehicles who
4 reside in the State of New Mexico and who indirectly
purchased or leased Class Vehicles in New Mexico during
5 the Class Period.

6 **New York Class**

7 All current and former owners of Class Vehicles who
8 reside in the State of New York and who indirectly
purchased or leased Class Vehicles in New York during
the Class Period.

9 **North Carolina Class**

10 All current and former owners of Class Vehicles who
11 reside in the State of North Carolina and who indirectly
purchased or leased Class Vehicles in North Carolina
12 during the Class Period.

13 **North Dakota Class**

14 All current and former owners of Class Vehicles who
15 reside in the State of North Dakota and who indirectly
purchased or leased Class Vehicles in North Dakota
during the Class Period.

16 **Oregon Class**

17 All current and former owners of Class Vehicles who
18 reside in the State of Oregon and who indirectly purchased
or leased Class Vehicles in Oregon during the Class Period.

19 **Rhode Island Class**

20 All current and former owners of Class Vehicles who
21 reside in the State of Rhode Island and who indirectly
purchased or leased Class Vehicles in Rhode Island during
22 the Class Period.

23 **South Dakota Class**

24 All current and former owners of Class Vehicles who
25 reside in the State of South Dakota and who indirectly
purchased or leased Class Vehicles in South Dakota during
the Class Period.

26 **Tennessee Class**

27 All current and former owners of Class Vehicles who
28 reside in the State of Tennessee and who indirectly
purchased or leased Class Vehicles in Tennessee during

the Class Period.

Utah Class

All current and former owners of Class Vehicles who reside in the State of Utah and who indirectly purchased or leased Class Vehicles in Utah during the Class Period.

Vermont Class

All current and former owners of Class Vehicles who reside in the State of Vermont and who indirectly purchased or leased Class Vehicles in Vermont during the Class Period.

West Virginia Class

All current and former owners of Class Vehicles who reside in the State of West Virginia and who indirectly purchased or leased Class Vehicles in West Virginia during the Class Period.

Wisconsin Class

All current and former owners of Class Vehicles who reside in the State of Wisconsin and who indirectly purchased or leased Class Vehicles in Wisconsin during the Class Period.

Class Period

On information and belief, the Class Period runs from at least January 1, 1995 – July 21, 2017. Plaintiffs reserve the right to amend this definition

56. Expressly excluded from the Classes are Defendants and their subsidiaries, affiliates, officers, directors, and employees.

57. 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 on an individual basis. The proposed Classes are appropriate under Rule 23(a), 23(b), 23(b)(2), or 23(b)(3).

58. **Numerosity (Rule 23(a)(1)):** The proposed Classes are made up of thousands of persons dispersed throughout California and the nation and joinder is impracticable. The precise number and identity of Class Members

1 are unknown to Plaintiffs at this time, but can be obtained from Defendants'
2 internal records.

3 59. **Commonality (Rule 23(a)(2)):** There are questions of law and fact
4 common to the members of the Classes, which predominate over questions
5 affecting only individual Class members, including:

- 6 • Whether Defendants and their co-conspirators engaged in a
7 combination and conspiracy to restrain competition and artificially
8 inflate the price of, and otherwise eliminate or restrain competition
9 concerning their vehicles sold in the United States;
- 10 • Whether Defendants engaged in unlawful, unfair or
11 fraudulent business practices;
- 12 • Whether Defendants' conduct violated the Sherman Act;
- 13 • Whether Defendants' publicized and advertised the
14 technological advancement, competitiveness, environmental
15 friendliness, fuel emission compliance, fuel efficiency and/or
16 performance of the Class Vehicles;
- 17 • Whether Defendants acted in concert with one another and
18 aided and abetted one another's fraud;
- 19 • Whether Defendants' conduct violates RICO;
- 20 • Whether the German Auto Cartel's conduct violated
21 California Business and Professions Code § 17200, *et seq.*;
- 22 • Whether Defendants' unlawful, unfair or deceptive practices
23 have harmed Plaintiffs and the Class members;
- 24 • Whether Plaintiffs and the members of each Class are
25 entitled to equitable or injunctive relief and,
- 26 • Whether Plaintiffs and the members of each Class are
27 entitled to damages, including punitive damages.

1 60. **Typicality (Rule 23(a)(3))**: Plaintiffs are members of the Classes
2 and Plaintiffs' claims are typical of the claims of the Classes.

3 61. **Adequacy (Rule 23(a)(4))**: Plaintiffs are willing and prepared to
4 serve the Court and the proposed Classes in a representative capacity.
5 Plaintiffs will fairly and adequately protect the interests of the Classes and
6 have no interests adverse to or which conflict with the interests of the other
7 members of the Classes. Plaintiffs have engaged the services of counsel who
8 are experienced in complex class litigation, will adequately prosecute this
9 action, and will assert and protect the rights of and otherwise represent the
10 Plaintiffs and absent Class members.

11 62. **Risk of Prejudice from Separate Actions (Rule 23(b)(1)(A))**: The
12 prosecution of separate actions by individual members of the Classes would
13 create a risk of inconsistency and varying adjudications, establishing
14 incompatible standards of conduct for Defendants.

15 63. **Equitable Class Relief (Rule 23(b)(2))**: Defendants have acted on
16 grounds generally applicable to the Classes, thereby making declaratory and
17 injunctive relief with respect to the members of the Classes as a whole
18 appropriate. By virtue of the nature of the cartel at issue, the German Auto
19 Cartel harmed Plaintiffs and the Classes for decades without their knowledge.

20 64. **Superiority (Rule 23(b)(3))**: A class action is superior to other
21 available means for the fair and efficient adjudication of this controversy.
22 Prosecution of the complaint as a class action will provide redress for
23 individual claims too small to support the expense of complex litigation and
24 reduce the possibility of repetitious litigation.

25 65. **Tolling - Discovery Rule**: Plaintiffs and the Class did not, and
26 could not possibly have discovered through the exercise of reasonable
27 diligence, that Defendants were concealing a massive conspiracy that limited
28 competition within the German Auto Cartel. Plaintiffs and the Class first had

1 any reasonable chance to find out about Defendants' collusion when *Der*
 2 *Spiegel* published its topical report on July 21, 2017. Therefore, any statute of
 3 limitations that would otherwise apply have been tolled by the discovery rule.

4 66. **Fraudulent Concealment:** Defendants' knowing, active
 5 concealment of the cartel described in this Complaint also operates to toll any
 6 statute of limitations that would otherwise apply in this litigation.

8 CLAIMS ON BEHALF OF THE NATIONWIDE CLASS

10 Count One

11 **Violations of Racketeer Influenced and Corrupt Organizations Act (RICO)**

12 **18 U.S.C. § 1962(c) - (d)**

13 **(On Behalf of Plaintiff and the Nationwide Class against all defendants)**

14 67. Plaintiffs re-allege and incorporate by reference the allegations set
 15 forth above.

16 68. Plaintiffs brings this claim individually and on behalf of the
 17 Nationwide Class against all defendants.

18 69. Defendants are all "persons" under 18 U.S.C. § 1961(3) because
 19 they are capable of holding, and do hold, "a legal or beneficial interest in
 20 property."

21 70. Section 1962(c) makes it "unlawful for any person employed by or
 22 associated with any enterprise engaged in, or the activities of which affect,
 23 interstate or foreign commerce, to conduct or participate, directly or
 24 indirectly, in the conduct of such enterprise's affairs through a pattern of
 25 racketeering activity." Section 1962(d), in turn, makes it unlawful for "any
 26 person to conspire to violate" Section 1962(c), among other provisions.

27 71. For more than two decades, Defendants have conspired to
 28 increase their market share and profits at the expense of consumers and in

1 defiance of basic principles of free market economics. Rather than play fair,
2 the members of the German Auto Cartel agreed *not* to compete with one
3 another on a variety of aspects of vehicle design and technological
4 development. Instead, the ostensible “competitors” collaborated (1) to limit
5 technological advancement and competition between them; (2) to share
6 sensitive product plans and technology; (3) to adopt shared standards; (4) to
7 agree on certain suppliers and manufacturers, among others.

8 72. Each member of the German Auto Cartel separately participated
9 in its affairs. In particular, representatives from each named Defendant
10 attended hundreds of meetings spanning decades. Specific examples of
11 conduct in furtherance of the conspiracy include agreeing to limit the speed at
12 which soft top convertibles can open and agreeing to standardize urea tanks
13 in diesel vehicles.

14 73. As a result of this conspiracy, the Cartel was able to effectively
15 eliminate competition in the United States while simultaneously saving on
16 costs and continuing to charge consumers a premium.

17 74. Those who sought to compete with the Cartel for the market of
18 European-engineered cars could barely find a toe-hold. Saab was forced to
19 shutter completely. Ford, for example, tried to compete by acquiring the
20 Jaguar and Land Rover brands. Unsatisfied with the brands’ performance,
21 Ford sold them to Tata Motors, an Indian corporation.

22 75. Some former competitors retreated from the United States market
23 and found it difficult or impossible to return, like Renault. While Fiat and Alfa
24 Romeo have managed to reappear stateside with the assistance of the
25 restructured FCA US LLC (parent: Fiat Chrysler N.A.), they have made no
26 noticeable impact on Defendants’ market share.

27 76. Another fate awaited other former competitors of the German
28 Auto Cartel: some were swallowed whole by the Cartel. BMW now owns

1 Mini; Volkswagen has Lamborghini and Bentley.

2 77. Over the decades the German Auto Cartel went undiscovered, the
3 members were able to increase their market share and profits. They are the
4 largest and most profitable carmakers in the American market for European
5 cars.

6 78. Not only were purchasers of defendants' vehicles harmed by
7 paying a supracompetitive price, the public as a whole was harmed when the
8 Cartel agreed to limit the size of AdBlue tanks in diesel vehicles – directly
9 contributing to the scandal known as Dieseldate.

10 79. To accomplish their scheme or common course of conduct,
11 Defendants, along with others, had to work together to conceal the truth. Each
12 Defendant was employed by or associated with, and conducted or
13 participated in the affairs of, one or several RICO enterprises (defined below
14 and referred to collectively as the "Enterprise"). The purpose of the Enterprise
15 was to collude to lower costs and competition, share technology, and
16 maximize market share and profit worldwide, all while deceiving consumers
17 and regulators into believing that the cartel's members were actually fiercely
18 competing with each other. The motivation was simple: to increase the RICO
19 Defendants' revenues and profits and minimize their losses in the design,
20 manufacture, distribution and sale of the Class Vehicles and their component
21 parts. As a direct and proximate result of their fraudulent scheme and
22 common course of conduct, Defendants were able to crush their competition
23 in the United States and extract billions of dollars from American consumers
24 over a period of more than twenty years. As explained below, their years-long
25 misconduct violated Sections 1962(c) and (d).

26 80. At all relevant times, Defendants, along with other individuals
27 and entities, including unknown suppliers involved in the design, calibration,
28 manufacture, testing, marketing, and sale of the Class Vehicles or the

1 component parts thereof, operated an association-in-fact enterprise, which
2 was formed for the aforementioned purposes, and through which enterprise
3 they conducted a pattern of racketeering activity under 18 U.S.C. § 1961(4).

4 81. At all relevant times, the Enterprise and its component “working
5 groups” constituted a single “enterprise” or multiple enterprises within the
6 meaning of 18 U.S.C. § 1961(4), as legal entities, as well as individuals and
7 legal entities associated-in-fact for the common purpose of engaging in
8 Defendants’ unlawful profit-making scheme.

9 82. The association-in-fact Enterprise consisted of at least the
10 following entities and individuals, and likely others: Volkswagen AG and
11 Volkswagen Group of America, Inc; Audi AG and Audi of America, LLC; Dr.
12 Ing. h.c. F. Porsche AG and Porsche Cars of North America, Inc.; Daimler AG
13 and Mercedes-Benz USA, LLC; and Bayerische Motoren Werke AG and BMW
14 North America, LLC. Each of these is a distinct legal entity, and each knew or
15 recklessly disregarded that the Class Vehicles were the product of collusion
16 and conspiracy.

17 83. Working with other members of the Enterprise, executives of
18 Volkswagen AG, Audi AG, Porsche AG, Daimler AG, and BMW AG, along
19 with their subsidiaries, formed “working groups” in order to share
20 competitively sensitive technology, limit technological development, and
21 select suppliers and limit costs, all while maintaining premium prices on their
22 products. They further conspired to cover up each other’s violations of the law
23 through emissions cheating and other fraudulent conduct, and to conceal the
24 existence of the conspiracy from legitimate industry groups, government
25 regulators, consumers, and competitors.

26 84. At least as to the emissions cheating aspect of the conspiracy,
27 certain suppliers acted as co-conspirators. Robert Bosch GmbH (“Bosch”),
28 another wholly distinct legal entity, worked with Volkswagen, Audi, and

1 Porsche to develop and implement the “defeat device” by which the
2 “Dieselgate” emissions cheating scheme was implemented. Bosch also
3 supplied diesel engine and emissions controls to Daimler that are the subject
4 of similar accusations.

5 85. According to *Der Spiegel*, Bosch even attended some of the
6 meetings of the Enterprise in order to develop and conspire to implement the
7 emissions cheating scheme: after a meeting between Daimler AG, BMW AG,
8 Audi AG, Volkswagen AG, Porsche AG, and Bosch on October 19, 2006, a
9 Volkswagen executive was reported to have said (translated from German):
10 “Everyone wants a limit” on emissions treatment injection “because of the
11 limited size of the urea tanks. Nobody wants the true motivation of this
12 limitation [to reach] the authorities (CARB, EPA).”¹¹

13 86. *Bild am Sonntag*, meanwhile, reports that internal documents
14 confirm Bosch’s attendance as well as coordination between at least Audi and
15 Daimler on the exhaust after-treatment emissions cheating scheme.¹²

16 87. The Enterprise reportedly began as early as the mid-1990s, long
17 before the merger of Volkswagen and Porsche. It was not until July 2017 that
18 the scheme was revealed, when *Der Spiegel* reported that Volkswagen had
19 self-reported possible antitrust violations to German regulators, and later
20 reported that Daimler had also self-reported possible violations.

21 88. It is unclear which Enterprise member defected first. *Süddeutsche*
22
23

24 ¹¹ Frank Dohmen, “Bosch an Absprachen der Autokonzerne beteiligt,” *Der*
25 *Spiegel*, July 28, 2017,
26 [http://www.spiegel.de/wirtschaft/unternehmen/bosch-beteiligt-bei-](http://www.spiegel.de/wirtschaft/unternehmen/bosch-beteiligt-bei-absprachen-von-daimler-bmw-audi-volkswagen-und-porsche-a-1160101.html)
27 [absprachen-von-daimler-bmw-audi-volkswagen-und-porsche-a-1160101.html](http://www.spiegel.de/wirtschaft/unternehmen/bosch-beteiligt-bei-absprachen-von-daimler-bmw-audi-volkswagen-und-porsche-a-1160101.html).

28 ¹² Kayhan Özgenc and Jan-Christopher Wehmeyer, “Bosch an
Geheimabsprachen der Autobauer Beteiligt,” *Bild am Sonntag*, July 28, 2017.

1 *Zeitung* claims Daimler self-reported before Volkswagen in this case.¹³

2 89. At all relevant times, the Enterprise: (a) had an existence separate
3 and distinct from each Defendant; (b) was separate and distinct from the
4 pattern of racketeering in which Defendants engaged; and (c) was an ongoing
5 and continuing organization consisting of legal entities, including Defendants
6 and co-conspirators like Bosch, their executives, and other entities and
7 individuals associated for the common purpose of designing, calibrating,
8 manufacturing, distributing, testing, marketing, and selling the Class Vehicles
9 to consumers in the Nationwide and individual state Classes, and deriving
10 profits and revenues from those activities. Each member of the Enterprise
11 shared in the bounty generated by the enterprise, i.e., by sharing the benefit
12 derived from increased profits generated by the scheme.

13 90. The Enterprise functioned by selling vehicles and component parts
14 to the consuming public. Many of these products are legitimate, including
15 automobiles not subject to the diesel emissions cheating aspect of the
16 conspiracy. However, Defendants and their co-conspirators, through their
17 illegal Enterprise, engaged in a pattern of racketeering activity, which
18 involves a fraudulent scheme to increase profits for Defendants and the other
19 entities and individuals associated-in-fact with the Enterprise's activities
20 through the illegal scheme.

21 91. The Enterprise engaged in, and its activities affected, interstate
22 and foreign commerce, because it involved commercial activities across state
23 boundaries, such as the marketing, promotion, advertisement and sale or
24 lease of the Class Vehicles throughout the country, and the receipt of revenue

25
26 ¹³ Thomas Fromm, Georg Mascolo, and Klaus Ott, "Daimler kam VW mit
27 *Selbstanzeige* zuvor," *Süddeutsche Zeitung*, July 24, 2017,
28 <http://www.sueddeutsche.de/wirtschaft/exklusiv-daimler-kam-vw-mit-selbstanzeige-zuvor-1.3601190>.

1 from the sale of the same. The communications and meetings by which the
2 Enterprise conducted its scheme took place all over the world, in the United
3 States and abroad. The Enterprise's activities affected consumers worldwide,
4 but directly and perhaps most strongly affected commerce within the United
5 States by removing competing manufacturers from the marketplace and
6 imposing, through unlawful means, impenetrable barriers to entry.

7 92. Within the Enterprise, there was a common communication
8 network by which co-conspirators shared information on a regular basis. This
9 network entailed both formal and informal communications, including in-
10 person meetings of the Enterprise "working groups" and regular email,
11 telephone, and informal in-person communications. The enterprise used this
12 common communication network for the purposes of sharing competitively
13 sensitive technology, limiting technological development, and selecting
14 suppliers and limiting costs, all while maintaining premium prices on their
15 products and concealing each other's wrongdoing.

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

22 94. Defendants participated in the operation and management of the
23 Enterprise by directing its affairs, as described herein. While Defendants
24 participated in, and are members of, the Enterprise, they have a separate
25 existence from the enterprise, including distinct legal statuses, different offices
26 and roles, bank accounts, officers, directors, employees, individual
27 personhood, reporting requirements, and financial statements. Without
28 Defendants' willing participation, the Enterprise's scheme and common

1 course of conduct would have been unsuccessful.

2 95. Defendants directed and controlled the ongoing organization
3 necessary to implement the scheme at meetings and through communications
4 of which Plaintiffs cannot fully know at present, because such information lies
5 in the Defendants' and others' hands. Similarly, because Defendants often
6 refer to themselves as a group (i.e., "Volkswagen Group" rather than
7 "Volkswagen AG" or "Volkswagen Group of America"), Plaintiffs cannot
8 fully know the extent of each individual corporate entity's involvement in the
9 wrongdoing prior to having access to discovery.

10 96. To carry out, or attempt to carry out the scheme to defraud,
11 Defendants, each of whom is a person associated-in-fact with the Enterprise,
12 did knowingly conduct or participate in, directly or indirectly, the conduct of
13 the affairs of the Enterprise through a pattern of racketeering activity within
14 the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c), and which employed
15 the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail
16 fraud) and § 1343 (wire fraud).

17 97. Specifically, as alleged herein, Defendants have committed,
18 conspired to commit, and/or aided and abetted in the commission of at least
19 two predicate acts of racketeering activity (i.e., violations of 18 U.S.C. §§ 1341
20 and 1343). The multiple acts of racketeering activity that Defendants
21 committed, or aided or abetted the commission of, were related to each other,
22 posed a threat of continued racketeering activity, and therefore constitute a
23 "pattern of racketeering activity." The racketeering activity was made possible
24 by Defendants' regular use of the facilities, services, distribution channels, and
25 employees of the Enterprise. Defendants participated in the scheme to
26 defraud by using mail, telephone and the Internet to transmit mailings and
27 wires in interstate or foreign commerce.

28 98. Defendants used, directed the use of, and/or caused to be used,

1 thousands of interstate mail and wire communications into and within the
2 United States in service of their scheme through misrepresentations,
3 concealments and material omissions.

4 99. Defendants devised and knowingly carried out a material scheme
5 and/or artifice to defraud Plaintiff and Class members or to obtain money
6 from Plaintiffs and the Nationwide Class by means of materially false or
7 fraudulent pretenses, representations, promises, or omissions of material facts.
8 For the purpose of executing the illegal scheme, Defendants committed these
9 racketeering acts, which number in the thousands, intentionally and
10 knowingly with the specific intent to advance the illegal scheme.

11 100. Defendants' predicate acts of racketeering (18 U.S.C. § 1961(1))
12 include, but are not limited to:

- 13 a. **Mail Fraud:** Defendants violated 18 U.S.C. § 1341 by sending
14 or receiving, or by causing to be sent and/or received,
15 materials via U.S. mail or commercial interstate carriers for
16 the purpose of executing the unlawful scheme to develop,
17 design, manufacture, market, and sell the Class Vehicles by
18 means of false pretenses, misrepresentations, promises, and
19 omissions.
- 20 b. **Wire Fraud:** Defendants violated 18 U.S.C. § 1343 by
21 transmitting and/or receiving, or by causing to be
22 transmitted and/or received, materials by wire for the
23 purpose of executing the unlawful scheme to defraud and
24 obtain money on false pretenses, misrepresentations,
25 promises, and omissions.

26 101. Defendants' uses of mail and wires include, but are not limited to,
27 the transmission, delivery, or shipment of the following by Defendants or
28 third parties that were foreseeably caused to be sent as a result of Defendants'

1 illegal scheme:

- 2 a. the Class Vehicles themselves;
- 3 b. component parts of the Class Vehicles that were the subject
4 of collusion between Defendants and co-conspirator
5 suppliers, including Bosch;
- 6 c. false or misleading emission test results for diesel vehicles
7 and the resulting fraudulently-obtained regulatory
8 certifications;
- 9 d. false or misleading communications intended to prevent
10 regulators and the public from discovering the true nature of
11 the relationship between Defendants;
- 12 e. sales and marketing materials, including advertising,
13 websites, packaging, brochures, and labeling, concealing the
14 true relationship between Defendants and the true nature of
15 the Class Vehicles;
- 16 f. documents intended to facilitate the manufacture and sale of
17 the Class Vehicles, including bills of lading, invoices,
18 shipping records, reports and correspondence;
- 19 g. documents to process and receive payment for the Class
20 Vehicles by unsuspecting Class members, including invoices
21 and receipts;
- 22 h. payments to participating suppliers and coconspirators, and
23 millions of dollars in compensation to participating
24 executives; deposits of proceeds;
- 25 i. and/or other documents and things, including electronic
26 communications.

27 102. Defendants also used the internet and other electronic facilities to
28 carry out the scheme and conceal their ongoing fraudulent activities.

1 Specifically, Defendants made misrepresentations about the Class Vehicles on
2 their websites, YouTube, and through advertising online, all of which were
3 intended to mislead regulators and the public about technological
4 developments, emission standards, and the true relationships between
5 Defendants.

6 103. Defendants also communicated by U.S. mail, by interstate
7 facsimile, and by interstate electronic mail with various other affiliates,
8 regional offices, divisions, dealerships and other third-party entities in
9 furtherance of the scheme.

10 104. The mail and wire transmissions described herein were made in
11 furtherance of Defendants' scheme and common course of conduct to deceive
12 regulators and consumers and lure consumers into purchasing the Class
13 Vehicles.

14 105. Many of the precise dates of the fraudulent uses of the U.S. mail
15 and interstate wire facilities have been deliberately hidden, and cannot be
16 alleged without access to Defendants' books and records. However, Plaintiff
17 has described the types of predicate acts of mail and/or wire fraud and the
18 period during which they occurred. These include thousands of
19 communications to perpetuate and maintain the scheme, including the types
20 of things and documents described in the preceding paragraphs.

21 106. Defendants have not undertaken the practices described herein in
22 isolation, but as part of a common scheme and conspiracy. In violation of 18
23 U.S.C. § 1962(d), Defendants conspired to violate 18 U.S.C. § 1962(c), as
24 described herein. Various other persons, firms and corporations, including
25 third-party entities and individuals not named as defendants in this
26 Complaint, have participated as co-conspirators with Defendants in these
27 offenses and have performed acts in furtherance of the conspiracy to increase
28 or maintain revenues, increase market share, and/or minimize losses for the

1 Defendants and their unnamed co-conspirators throughout the illegal scheme
2 and common course of conduct.

3 107. Defendants aided and abetted others in the violations of the above
4 laws, thereby rendering them indictable as principals in the 18 U.S.C. §§ 1341
5 and 1343 offenses.

6 108. To achieve their common goals, Defendants hid from the general
7 public the true nature of their relationship and the true nature of the Class
8 Vehicles. Defendants suppressed and/or ignored warnings from third parties,
9 whistleblowers, and governmental entities about these matters and about the
10 discrepancies in emissions testing and the concealed defeat devices present in
11 certain of the Class Vehicles.

12 109. With knowledge and intent, Defendants and each member of the
13 conspiracy, with knowledge and intent, have agreed to the overall objectives
14 of the conspiracy, and have participated in the common course of conduct, to
15 commit acts of fraud and indecency.

16 110. Indeed, for the conspiracy to succeed, each of Defendants and
17 their co-conspirators had to agree to implement and use (or to not use in order
18 to avoid competition between Defendants) the same or similar technology,
19 illicit emissions control devices, and fraudulent tactics.

20 111. Defendants knew and intended that United States government
21 regulators, consumers, and competitors would rely on their material
22 misrepresentations and omissions made about the Class Vehicles, about
23 suppliers, about research, development, and technology, and about the
24 relationships between Defendants. Defendants knew and intended that
25 consumers would purchase the Class Vehicles and incur costs as a result.

26 112. As described herein, Defendants engaged in a pattern of related
27 and continuous predicate acts for years. The predicate acts constituted a
28 variety of unlawful activities, each conducted with the common purpose of

1 obtaining significant revenues from Plaintiffs and Class members based on
2 their misrepresentations and omissions. The predicate acts also had the same
3 or similar results, participants, victims, and methods of commission. The
4 predicate acts were related and not isolated events.

5 113. The predicate acts had the purpose of generating significant
6 revenue and profits for Defendants at the expense of Plaintiffs and Class
7 members. The predicate acts were committed or caused to be committed by
8 Defendants through their participation in the Enterprise and in furtherance of
9 its unlawful scheme, and were interrelated in that they involved obtaining
10 Plaintiffs' and Class members' funds and avoiding the expenses associated
11 with actual competition in the marketplace through independent research and
12 development in the Class Vehicles.

13 114. During the design, manufacture, testing, marketing and sale of the
14 Class Vehicles, Defendants shared among themselves technical, marketing,
15 and financial information that revealed both competitively sensitive
16 technology, and the existence of the unlawful emissions cheating devices
17 contained in certain Class Vehicles. Nevertheless, Defendants chose and
18 agreed to disseminate information that deliberately misrepresented the Class
19 Vehicles and the true relationship between Defendants in their concerted
20 efforts to market and sell Class Vehicles to consumers and remove nearly all
21 alternatives from the market.

22 115. By reason of, and as a result of the conduct of Defendants, and in
23 particular, their pattern of racketeering activity, Plaintiffs and Class members
24 have been injured in their business and/or property in multiple ways,
25 including but not limited to overpayment at the time of purchase or lease for
26 Class Vehicles purportedly having properties and benefits, including cutting-
27 edge proprietary technology and ecologically-friendly "Clean Diesel"
28 technology, that did not have these properties or meet these standards, and

1 other, ongoing out-of-pocket and loss-of-use expenses.

2 116. Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly
3 and proximately caused economic damage to Plaintiffs' and Class members'
4 business and property, and Plaintiffs and Class members are entitled to bring
5 this action for three times their actual damages, as well as
6 injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to
7 18 U.S.C. § 1964(c). Members of the Enterprise knew, understood, and
8 intended for members of the Class to purchase the Class Vehicles, and knew,
9 understood, and foresaw that revelation of the truth would injure members of
10 the Class.

11 **Count Two**

12 **Violations of the Sherman Act, Section 1**

13 **15 U.S.C. § 1**

14 **(On Behalf of Plaintiffs and the Nationwide Class against all defendants)**

15 117. Plaintiffs re-allege and incorporate by reference each of the
16 paragraphs set forth above as though fully set forth herein.

17 118. Defendants and their co-conspirators entered into a combination
18 and/or conspiracy in restraint of trade, and thereby violated Section 1 of the
19 Sherman Act, 15 U.S.C. § 1.

20 119. Specifically, Defendants conspired and agreed to restrain trade
21 and commerce by restricting technological advancement and sharing
22 competitively sensitive technology, by stabilizing and/or restraining research
23 and development and supplier costs, and by artificially inflating and/or
24 stabilizing the prices of the Class Vehicles.

25 120. Defendants engaged in numerous anticompetitive activities, as
26 alleged herein, in order to create and undertake this unlawful combination or
27 conspiracy. These activities and acts were done in furtherance of the
28 conspiracy and/or combination in restraint of trade, and were undertaken,

1 authorized, or ordered by officers, employees, and agents of Defendants while
2 engaged in the management of Defendants' business.

3 121. The collusion, conspiracy, and combination between Defendants
4 extended to numerous areas of vehicle development and component parts
5 including but not limited to brakes, suspension, transmissions, electronic
6 systems, mechanical systems such as convertible roofs, and diesel exhaust
7 after-treatment.

8 122. These activities were directed at the United States market for
9 European automobiles, and German-engineered vehicles in particular.

10 123. This collusion had multiple effects, each compounding the
11 damage to the economy, Plaintiffs, and the Class. Defendants' conspiracy
12 eliminated or substantially reduced competition in the United States market
13 for European-engineered automobiles, leaving limited consumer choice. Not
14 only was competition eliminated or restrained between the German Auto
15 Cartel manufacturers, but the collusion between them eliminated or
16 suppressed competition from other European automakers in the United
17 States.

18 124. Defendants' conspiracy or combination in restraint of trade also
19 resulted in benefits to the German Auto Cartel in the form of stabilization or
20 maintenance of price and market share for the Cartel.

21 125. Finally, by maintaining premium prices despite the reduced
22 research and development and component part costs for the German Auto
23 Cartel that resulted from their unlawful conspiracy, and by failing to compete
24 among themselves, the Defendants artificially inflated the prices they charged
25 consumers and the profits that resulted.

26 126. As a direct and proximate result of Defendants' conduct, Plaintiffs
27 and Class members have been injured in their business and property by,
28 among other things, paying supracompetitive prices for their vehicles, and

1 will continue to be injured if Defendants' conduct is not enjoined.

2 127. The conspiracy or combination alleged herein constitutes a per se
3 violation of the federal antitrust laws.

4 128. Plaintiffs and Class members are therefore entitled to injunctive
5 relief against Defendants under the Clayton Act.

6
7 **CLAIMS ON BEHALF OF THE STATE CLASSES**

8
9 **Count Three**

10 **Violation of Alabama's Antitrust Law**

11 **Ala. Code § 6-5-60, et seq.**

12 **(On Behalf of Plaintiffs and the Alabama Class against all defendants)**

13 129. Plaintiffs re-allege and incorporate by reference each of the
14 paragraphs set forth above as though fully set forth herein.

15 130. Under Alabama law, indirect purchasers have standing to
16 maintain an action under the antitrust provisions of the Alabama Code based
17 on the facts alleged in this Complaint.

18 131. Defendants have entered into an agreement and conspiracy in
19 restraint of trade which violates the antitrust laws of Alabama. Defendants
20 agreed to, and in fact did, act in restraint of trade or commerce by affecting,
21 fixing, controlling and/or maintaining, at artificial and/or supracompetitive
22 levels, the prices of German vehicles.

23 132. During the Class Period, Defendants' conduct substantially
24 affected Alabama's commerce.

25 133. Class Members purchased German vehicles within the State of
26 Alabama during the Class Period. But for Defendants' conduct set forth
27 herein, the price of Defendants' vehicles would have been lower, in an
28 amount to be determined at trial.

1 134. Plaintiffs and members of the Class were injured with respect to
2 purchases of German vehicles in Alabama and are entitled to all forms of
3 relief, including actual damages, treble damages, and interest, reasonable
4 attorneys' fees and costs.

5 **Count Four**

6 **Violation of Arizona's Uniform State Antitrust Act**

7 **Ariz. Rev. Stat. § 44-1401, et seq.**

8 **(On Behalf of Plaintiffs and the Arizona Class against all defendants)**

9 135. Plaintiffs re-allege and incorporate by reference each of the
10 paragraphs set forth above as though fully set forth herein.

11 136. Defendants have entered into an agreement and conspiracy in
12 restraint of trade which violates Arizona Rev. Stat. § 44-1401, et seq.

13 137. Defendants entered into a contract, combination, or conspiracy
14 between two or more persons in restraint of, or to monopolize, trade or
15 commerce in the German vehicle market, a substantial part of which occurred
16 within Arizona.

17 138. Defendants established, maintained, or used a monopoly, or
18 attempted to establish a monopoly, of trade or commerce in the German
19 vehicle market, a substantial part of which occurred within Arizona, for the
20 purpose of excluding competition or controlling, fixing, or maintaining prices
21 in the German vehicle market.

22 139. Defendants flagrantly violated Arizona's laws and their unlawful
23 conduct substantially affected Arizona's trade and commerce.

24 140. Members of the Class purchased German vehicles in Arizona at
25 supracompetitive prices as a result of Defendants' conduct.

26 141. As a direct and proximate result of Defendants' unlawful conduct,
27 the Plaintiffs and members of the Arizona Class have been injured in their
28 business or property and are threatened with further injury.

1 142. By reason of the foregoing, Plaintiffs and members of the Arizona
2 Class are entitled to seek all forms of relief available under Arizona Revised
3 Statute § 44-1401, *et seq.*

4 **Count Five**

5 **Violation of the Cartwright Act**

6 **Cal. Bus. & Prof. Code § 16700, *et seq.***

7 **(On Behalf of Plaintiffs and the California Class against all defendants)**

8 143. Plaintiffs re-allege and incorporate by reference each of the
9 paragraphs set forth above as though fully set forth herein.

10 144. Defendants have entered into an agreement and conspiracy in
11 restraint of trade which violates the California Business and Professions Code,
12 § 16700, *et seq.*

13 145. Specifically, Defendants conspired and agreed to restrain trade
14 and commerce by restricting technological advancement and sharing
15 competitively sensitive technology, by stabilizing and/or restraining research
16 and development and supplier costs, and by artificially inflating and/or
17 stabilizing the prices of German vehicles.

18 146. Defendants engaged in numerous anticompetitive activities, as
19 alleged herein, in order to create and undertake this unlawful combination or
20 conspiracy. These activities and acts were done in furtherance of the
21 conspiracy and/or combination in restraint of trade, and were undertaken,
22 authorized, or ordered by officers, employees, and agents of Defendants while
23 engaged in the management of Defendants' business.

24 147. The collusion, conspiracy, and combination between Defendants
25 extended to numerous areas of vehicle development and component parts
26 including but not limited to brakes, suspension, transmissions, electronic
27 systems, mechanical systems such as convertible roofs, and diesel exhaust
28 after-treatment.

1 148. These activities were directed at the United States and California
2 market for European automobiles, and German-engineered vehicles in
3 particular.

4 149. Defendants' collusion had multiplicative anticompetitive effects.
5 Defendants' conspiracy eliminated or substantially reduced competition in the
6 United States and California market for European-engineered automobiles,
7 leaving limited consumer choice. Not only was competition eliminated or
8 restrained between the German Auto Cartel, but the collusion between them
9 eliminated or suppressed competition from other European automakers in the
10 United States and California.

11 150. Defendants' conspiracy or combination in restraint of trade also
12 resulted in the stabilization or maintenance of price and market share between
13 ostensible competitors – the German Auto Cartel.

14 151. Finally, by maintaining premium prices despite the reduced
15 research and development and component part costs that resulted from their
16 unlawful conspiracy, and by failing to compete among themselves, the
17 Defendants artificially inflated the prices they charged consumers and the
18 profits that resulted.

19 152. As a direct and proximate result of Defendants' conduct, Plaintiffs
20 and Class members have been injured in their business and property. This
21 constitutes an antitrust injury because Plaintiffs and Class members paid more
22 for Class Vehicles than they would have if Defendants' conduct had been
23 known to the public at the time of purchase or lease. Defendants charged a
24 premium price and exacted inflated profits as a result of their restraint of
25 competition and trade, and consumers had little choice but to pay these
26 premium prices as a result of the restrained and suppressed competition in
27 the marketplace that resulted from Defendants' anticompetitive conduct.
28

Count Six

Violation of the Unfair Competition Act

Cal. Bus. & Prof. Code § 17200, *et seq.*

(On Behalf of Plaintiffs and the California Class against all defendants)

153. Plaintiffs re-allege and incorporate by reference each of the paragraphs set forth above as though fully set forth herein.

154. Plaintiffs and members of the general public bring this claim pursuant to the “unlawful” prong of Business & Professions Code §§ 17200 *et seq.* (“UCL”), which provides that “unfair competition shall mean and include any unlawful, unfair or deceptive business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions Code.”

155. Defendants have violated and continue to violate section 17200’s prohibition against engaging in “unlawful” business acts or practices, by, among other things:

- Violating the CLRA, Civil Code section 1750, *et seq.*;
- Violating federal environmental laws, including the Clean Air Act;
- Violating Business & Professions Code section 16700, *et seq.*;
- Violating Business & Professions Code section 17500, *et seq.*; and
- Violating other federal and state law as alleged herein.

156. Defendants also acted fraudulently and unfairly for purposes of section 17200 by, among other things:

- a. conspiring to share competitively sensitive technology and otherwise limit technological competition and innovation;
- b. conspiring to select component part suppliers and standards, and to set or maintain component part prices, making their untrue representations concerning proprietary engineering;

- 1 c. conspiring to install emissions-cheating devices in certain Class
2 Vehicles in order to fraudulently pass emissions testing while
3 polluting at many times the legal limit during normal operation,
4 and conspiring to cover up this scheme; and
- 5 d. falsely advertising and representing the Class Vehicles as
6 possessing qualities – namely, cutting-edge technology and
7 proprietary engineering – that they do not have.

8 157. As a result of Defendants’ unlawful business acts and practices,
9 Plaintiffs and the Class suffered injury in fact and lost money and/or
10 property. Each class member suffered harm when each was required to pay a
11 purchase price for their Class Vehicles which they never would have
12 purchased if the true facts were known; or paid a price in excess of what a
13 Class member would have paid if Defendants’ had accurately disclosed the
14 Class Vehicles’ characteristics (or had they engaged in true competition with
15 one another) and in the form of decreased resale value of the Vehicles.

16 158. Plaintiffs and the Class are entitled to full restitution and
17 disgorgement of the profits from Defendants’ unlawful business practices.

18 159. Plaintiffs are also entitled to equitable relief as a result of
19 Defendants’ violations of the Business & Professions Code section 17200, *et*
20 *seq.* Plaintiffs and Class are entitled to such relief in the form of full restitution
21 for the inflated sale price of the Vehicles.

22 160. Plaintiffs and the Class also seek an order enjoining Defendants
23 from continuing their unlawful business practices in the future.

Count Seven

Violation of the District of Columbia Antitrust Act

D.C. Code Ann. § 28-4501, *et seq.*

(On Behalf of Plaintiffs and the District of Columbia Class against all defendants)

161. Plaintiffs re-allege and incorporate by reference each of the paragraphs set forth above as though fully set forth herein.

162. The purpose of D.C.'s Antitrust Act is "to promote the unhampered freedom of commerce and industry throughout the District of Columbia by prohibiting restraints of trade and monopolistic practices."

163. Defendants contracted, combined or conspired to act in restraint of trade within the District of Columbia, and monopolized or attempted to monopolize the German vehicle market within the District of Columbia, in violation of D.C. Code § 28-4501, *et seq.*

164. Members of the Class purchased German vehicles within the District of Columbia during the Class Period. But for Defendants' conduct set forth herein, the price of Defendants' vehicles would have been lower, in an amount to be determined at trial.

165. Under District of Columbia law, indirect purchasers have standing to maintain an action under the antitrust provisions of the D.C. Code based on the facts alleged in this Complaint, because "any indirect purchaser in the chain of manufacture, production or distribution of goods...shall be deemed to be injured within the meaning of this chapter." D.C. Code § 28-4509(a).

166. Plaintiffs and members of the Class were injured with respect to purchases of German vehicles in the District of Columbia and are entitled to all forms of relief, including actual damages, treble damages, and interest, reasonable attorneys' fees and costs.

Count Eight

Violation of the Illinois Antitrust Act

740 Ill. Comp. Stat. Ann. 10/3(1), *et seq.*

(On Behalf of Plaintiffs and the Illinois Class against all defendants)

167. Plaintiffs re-allege and incorporate by reference each of the paragraphs set forth above as though fully set forth herein.

168. The Illinois Antitrust Act, 740 ILCS 10/1, *et seq.*, aims “to promote the unhampered growth of commerce and industry throughout the State by prohibiting restraints of trade which are secured through monopolistic or oligarchic practices and which act or tend to act to decrease competition between and among persons engaged in commerce and trade. . . .” 740 ILCS 10/2.

169. But for Defendants’ conduct set forth herein, the price of Defendants’ vehicles would have been lower, in an amount to be determined at trial.

170. Under the Illinois Antitrust Act, indirect purchasers have standing to maintain an action for damages based on the facts alleged in this Complaint. 740 ILCS 10/7(2).

171. Defendants made contracts or engaged in a combination or conspiracy with each other, though they would have been competitors but for their prior agreement, for the purpose of fixing, controlling or maintaining prices for German vehicles sold, and/or for allocating customers or markets for German vehicles within the intrastate commerce of Illinois.

172. Defendants further unreasonably restrained trade or commerce and established, maintained or attempted to acquire monopoly power over the market for German vehicles in Illinois for the purpose of excluding competition, in violation of 740 ILCS 10/1, *et seq.*

173. Members of the Class were injured with respect to purchases of

1 German vehicles in Illinois and are entitled to all forms of relief, including
2 actual damages, treble damages, reasonable attorneys' fees and costs.

3 **Count Nine**

4 **Violation of the Iowa Competition Law**

5 **Iowa Code § 553.1, *et seq.***

6 **(On Behalf of Plaintiffs and the Iowa Class against all defendants)**

7 174. Plaintiffs re-allege and incorporate by reference each of the
8 paragraphs set forth above as though fully set forth herein.

9 175. The Iowa Competition Law aims to "prohibit[] restraint of
10 economic activity and monopolistic practices." Iowa Code § 553.2.

11 176. Defendants contracted, combined or conspired to restrain or
12 monopolize trade in the market for German vehicles, and attempted to
13 establish or did in fact establish a monopoly for the purpose of excluding
14 competition or controlling, fixing or maintaining prices for German vehicles,
15 in violation of Iowa Code § 553.1, *et seq.*

16 177. Members of the Class purchased Defendants' vehicles at
17 supracompetitive prices in Iowa. But for Defendants' conduct, the price of
18 Defendants' vehicles would have been lower, in an amount to be determined
19 at trial.

20 178. Plaintiffs and members of the Iowa Class were injured with
21 respect to purchases of German vehicles in Iowa, and are entitled to all forms
22 of relief, including actual damages, exemplary damages for willful conduct,
23 reasonable attorneys' fees and costs, and injunctive relief.

24 **Count Ten**

25 **Violation of the Kansas Restraint of Trade Act**

26 **Kan. Stat. Ann. § 50-101 *et seq.***

27 **(On Behalf of Plaintiffs and the Kansas Class against all defendants)**

28 179. Plaintiffs re-allege and incorporate by reference each of the

1 paragraphs set forth above as though fully set forth herein.

2 180. The Kansas Restraint of Trade Act aims to prohibit practices which
3 “tend to prevent full and free competition in the importation, transportation
4 or sale of articles imported into this state.” Kan. Stat. Ann. § 50-112.

5 181. Under the Kansas Restraint of Trade Act, indirect purchasers have
6 standing to maintain an action based on the facts alleged in this Complaint.
7 Kan. Stat. Ann § 50-161(b).

8 182. Defendants combined capital, skill or acts for the purposes of
9 creating restrictions in trade or commerce of German vehicles, increasing the
10 price of their vehicles, preventing competition in the sale of German vehicles,
11 or binding themselves not to sell their vehicles, in a manner that established
12 the price of German vehicles and precluded free and unrestricted competition
13 among themselves in the sale of German vehicles, in violation of Kan. Stat.
14 Ann. § 50-101, *et seq.*

15 183. Plaintiffs and members of the Class were injured with respect to
16 purchases of German vehicles in Kansas and are entitled to all forms of relief,
17 including actual damages, reasonable attorneys’ fees and costs, and injunctive
18 relief.

19 Count Eleven

20 **Violation of Maine’s Antitrust Statute**

21 **Me. Rev. Stat. Ann. Tit. 10 § 1101, *et seq.***

22 **(On Behalf of Plaintiffs and the Maine Class against all defendants)**

23 184. Plaintiffs re-allege and incorporate by reference each of the
24 paragraphs set forth above as though fully set forth herein.

25 185. Part 3 of Title 10 the Maine Revised Statutes generally governs
26 regulation of trade in Maine. Chapter 201 thereof governs monopolies and
27 profiteering, generally prohibiting contracts in restraint of trade and
28 conspiracies to monopolize trade. Me. Rev. Stat. Ann. Tit. 10, §§ 1101-02.

1 186. Under Maine law, indirect purchasers have standing to maintain
2 an action based on the facts alleged in this Complaint. Me. Rev. Stat. Ann. Tit.
3 10, § 1104(1).

4 187. Defendants contracted, combined or conspired in restraint of trade
5 or commerce of German vehicles within the intrastate commerce of Maine,
6 and monopolized or attempted to monopolize the trade or commerce of
7 German vehicles within the intrastate commerce of Maine, in violation of Me.
8 Rev. Stat. Ann. Tit. 10, § 1101, *et seq.*

9 188. But for Defendants' conduct set forth herein, the price of
10 Defendants' German vehicles would have been lower, in an amount to be
11 determined at trial.

12 189. Plaintiffs and members of the Class were injured with respect to
13 purchases of German vehicles in Maine and are entitled to all forms of relief,
14 including actual damages, treble damages, reasonable attorneys' and experts'
15 fees and costs.

16 Count Twelve

17 **Violation of Michigan's Antitrust Reform Act**

18 **Mich. Comp. Laws § 445.771 *et seq.***

19 **(On Behalf of Plaintiffs and the Michigan Class against all defendants)**

20 190. Plaintiffs re-allege and incorporate by reference each of the
21 paragraphs set forth above as though fully set forth herein.

22 191. The Michigan Antitrust Reform Act aims "to prohibit contracts,
23 combinations, and conspiracies in restraint of trade or commerce...to prohibit
24 monopolies and attempts to monopolize trade or commerce...[and] to provide
25 remedies, fines, and penalties for violations of this act." Mich. Act 274 of 1984.

26 192. Under the Michigan Antitrust Reform Act, indirect purchasers
27 have standing to maintain an action based on the facts alleged in this
28 Complaint. Mich. Comp. Laws. § 452.778(2).

1 193. Defendants contracted, combined or conspired to restrain or
2 monopolize trade or commerce in the market for German vehicles, in violation
3 of Mich. Comp. Laws § 445.772, *et seq.*

4 194. But for Defendants' conduct set forth herein, the price of
5 Defendants' German vehicles would have been lower, in an amount to be
6 proven at trial.

7 195. Plaintiffs and members of the Class were injured with respect to
8 purchases of German vehicles in Michigan and are entitled to all forms of
9 relief, including actual damages, treble damages for flagrant violations,
10 interest, costs, reasonable attorneys' fees, and injunctive or other appropriate
11 equitable relief.

12 Count Thirteen

13 **Violation of Minnesota's Antitrust Act**

14 **Minn. Stat. § 325D.49 *et seq.***

15 **(On Behalf of Plaintiffs and the Minnesota Class against all defendants)**

16 196. Plaintiffs re-allege and incorporate by reference each of the
17 paragraphs set forth above as though fully set forth herein.

18 197. The Minnesota Antitrust Law of 1971 aims to prohibit any
19 contract, combination or conspiracy when any part thereof was created,
20 formed, or entered into in Minnesota; any contract, combination or
21 conspiracy, wherever created, formed or entered into; any establishment,
22 maintenance or use of monopoly power; and any attempt to establish,
23 maintain or use monopoly power, whenever any of these affect Minnesota
24 trade or commerce.

25 198. Under the Minnesota Antitrust Act of 1971, indirect purchasers
26 have standing to maintain an action based on the facts alleged in this
27 Complaint. Minn. Stat. § 325D.56.

28 199. Defendants contracted, combined or conspired in unreasonable

1 restraint of trade or commerce in the market for German vehicles within the
2 intrastate commerce of and outside of Minnesota; established, maintained,
3 used or attempted to establish, maintain or use monopoly power over the
4 trade or commerce in the market for German vehicles within the intrastate
5 commerce of and outside of Minnesota; and fixed prices and allocated
6 markets for German vehicles within the intrastate commerce of and outside of
7 Minnesota, in violation of Minn. Stat. § 325D.49, *et seq.*

8 200. Plaintiffs and members of the Class were injured with respect to
9 purchases of German vehicles in Minnesota and are entitled to all forms of
10 relief, including actual damages, treble damages, costs and disbursements,
11 reasonable attorneys' fees, and injunctive relief necessary to prevent and
12 restrain violations hereof.

13 **Count Fourteen**

14 **Violation of the Mississippi Antitrust Statute**

15 **Miss. Code Ann. § 74-21-1 *et seq.***

16 **(On Behalf of Plaintiffs and the Mississippi Class against all defendants)**

17 201. Plaintiffs re-allege and incorporate by reference each of the
18 paragraphs set forth above as though fully set forth herein.

19 202. Title 75 of the Mississippi Code regulates trade, commerce and
20 investments. Chapter 21 thereof generally prohibits trusts and combines in
21 restraint or hindrance of trade, with the aim that "trusts and combines may be
22 suppressed, and the benefits arising from competition in business [are]
23 preserved" to Mississippians. Miss. Code Ann. § 75-21-39.

24 203. Trusts are combinations, contracts, understandings or agreements,
25 express or implied, when inimical to the public welfare and with the effect of,
26 *inter alia*, restraining trade, increasing the price or output of a commodity, or
27 hindering competition in the production or sale of a commodity. Miss. Code
28 Ann. § 75-21-1.

1 monopolization.

2 212. Under Nebraska law, indirect purchasers have standing to
3 maintain an action under the Junkin Act based on the facts alleged in this
4 Complaint. Neb. Rev. Stat. § 59-821.

5 213. Defendants contracted, combined or conspired in restraint of trade
6 or commerce of German vehicles within the intrastate commerce of Nebraska,
7 and monopolized or attempted to monopolize the market for German vehicles
8 within the intrastate commerce of Nebraska by possessing monopoly power
9 in the market and willfully maintaining that power through agreements to fix
10 prices, allocate markets and otherwise control trade, in violation of Neb. Rev.
11 Stat. § 59-801, *et seq.*

12 214. But for Defendants' conduct set forth herein, the price of
13 Defendants' German vehicles would have been lower, in an amount to be
14 determined at trial.

15 215. Plaintiffs and members of the Class were injured with respect to
16 purchases of German vehicles in Nebraska and are entitled to all forms of
17 relief, including actual damages or liquidated damages in an amount which
18 bears a reasonable relation to the actual damages which have been sustained,
19 as well as reasonable attorneys' fees, costs, and injunctive relief.

20 **Count Sixteen**

21 **Violation of New Hampshire's Antitrust Statute**

22 **N.H. Rev. Stat. Ann. Tit. XXXI, § 356, *et seq.***

23 **(On Behalf of Plaintiffs and the New Hampshire Class against all**
24 **defendants)**

25 216. Plaintiffs re-allege and incorporate by reference each of the
26 paragraphs set forth above as though fully set forth herein.

27 217. Title XXXI of the New Hampshire Statutes generally governs trade
28 and commerce. Chapter 356 thereof governs combinations and monopolies

1 and prohibits restraints of trade. N.H. Rev. Stat. Ann. §§ 356:2, 3.

2 218. Under New Hampshire law, indirect purchasers have standing to
3 maintain an action based on the facts alleged in this Complaint. N.H. Rev.
4 Stat. Ann. § 356:11(II).

5 219. Defendants fixed, controlled or maintained prices for German
6 vehicles, allocated customers or markets for German vehicles, and established,
7 maintained or used monopoly power, or attempted to, constituting a contract,
8 combination or conspiracy in restraint of trade in violation of N.H. Rev. Stat.
9 Ann. § 356:1, *et seq.*

10 220. But for Defendants' conduct set forth herein, the price of
11 Defendants' German vehicles would have been lower, in an amount to be
12 determined at trial.

13 221. Plaintiffs and members of the Class were injured with respect to
14 purchases of German vehicles in New Hampshire and are entitled to all forms
15 of relief, including actual damages sustained, treble damages for willful or
16 flagrant violations, reasonable attorneys' fees, costs, and injunctive relief.

17 Count Seventeen

18 **Violation of New Mexico's Antitrust Act**

19 **N.M. Stat. Ann. § 57-1-1, *et seq.***

20 **(On Behalf of Plaintiffs and the New Mexico Class against all defendants)**

21 222. Plaintiffs re-allege and incorporate by reference each of the
22 paragraphs set forth above as though fully set forth herein.

23 223. The New Mexico Antitrust Act aims to prohibit restraints of trade
24 and monopolistic practices. N.M. Stat. Ann. 57-1-15.

25 224. Under New Mexico law, indirect purchasers have standing to
26 maintain an action based on the facts alleged in this Complaint. N.M. Stat.
27 Ann. § 57-1-3.

28 225. Defendants contracted, agreed, combined or conspired, and

1 monopolized or attempted to monopolize trade for German Premium
2 Vehicles within the intrastate commerce of New Mexico, in violation of N.M.
3 Stat. Ann. § 57-1-1, *et seq.*

4 226. But for Defendants' conduct set forth herein, the price of
5 Defendants' German vehicles would have been lower, in an amount to be
6 determined at trial.

7 227. Plaintiffs and members of the Class were injured with respect to
8 purchases of German vehicles in New Mexico and are entitled to all forms of
9 relief, including actual damages, treble damages, reasonable attorneys' fees,
10 costs, and injunctive relief.

11 **Count Eighteen**

12 **Violation of New York Monopolies Law - Section 340**

13 **N.Y. Gen. Bus. Law § 340, *et seq.***

14 **(On Behalf of Plaintiffs and the New York Class against all defendants)**

15 228. Plaintiffs re-allege and incorporate by reference each of the
16 paragraphs set forth above as though fully set forth herein.

17 229. Article 22 of the New York General Business Law general
18 prohibits monopolies and contracts or agreements in restraint of trade, with
19 the policy of encouraging competition or the free exercise of any activity in the
20 conduct of any business, trade or commerce in New York. N.Y. Gen. Bus. Law
21 § 340(1).

22 230. Under New York law, indirect purchasers have standing to
23 maintain an action based on the facts alleged in this Complaint. N.Y. Gen.
24 Bus. Law § 340(6).

25 231. Defendants established or maintained a monopoly within the
26 intrastate commerce of New York for the trade or commerce of German
27 vehicles and restrained competition in the free exercise of the conduct of the
28 business of German Premium Vehicles within the intrastate commerce of New

1 York, in violation of N.Y. Gen. Bus. Law § 340, *et seq.*

2 232. Plaintiffs purchased German vehicles within the State of New
3 York during the Class Period. But for Defendants' conduct set forth herein, the
4 price of Defendants' German vehicles would have been lower, in an amount
5 to be determined at trial.

6 233. Plaintiffs and members of the Class were injured with respect to
7 purchases of German vehicles in New York and are entitled to all forms of
8 relief, including actual damages, treble damages, costs not exceeding \$10,000,
9 and reasonable attorneys' fees.

10 **Count Nineteen**

11 **Violation of N. C. Gen. Stat. - Ch. 75. Monopolies, Trusts & Consumer Protection**

12 **N.C. Gen. Stat. § 75-1, *et seq.***

13 **(On Behalf of Plaintiffs and the North Carolina Class against all defendants)**

14 234. Plaintiffs re-allege and incorporate by reference each of the
15 paragraphs set forth above as though fully set forth herein.

16 235. Defendants entered into a contract or combination in the form of
17 trust or otherwise, or conspiracy in restraint of trade or commerce in the
18 German vehicle market, a substantial part of which occurred within North
19 Carolina.

20 236. Defendants established, maintained, or used a monopoly, or
21 attempted to establish a monopoly, of trade or commerce in the German
22 vehicle market, for the purpose of affecting competition or controlling, fixing,
23 or maintaining prices, a substantial part of which occurred within North
24 Carolina.

25 237. Defendants' unlawful conduct substantially affected North
26 Carolina's trade and commerce.

27 238. As a direct and proximate cause of Defendants' unlawful conduct,
28 Plaintiff and the members of the North Carolina Class have been injured in

1 their business or property and are threatened with further injury.

2 239. By reason of the foregoing, Plaintiffs and members of the North
3 Carolina Class are entitled to seek all forms of relief available, including treble
4 damages, under N.C. Gen. Stat. § 75-1, *et seq.*

5 **Count Twenty**

6 **Violation of the North Dakota Uniform State Antitrust Act**

7 **N.D. Cent. Code § 51-08.1 *et seq.***

8 **(On Behalf of Plaintiffs and the North Dakota Class against all defendants)**

9 240. Plaintiffs re-allege and incorporate by reference each of the
10 paragraphs set forth above as though fully set forth herein.

11 241. The North Dakota Uniform State Antitrust Act generally prohibits
12 restraints on or monopolization of trade. N.D. Cent. Code § 51-08.1, *et seq.*

13 242. Under the North Dakota Uniform State Antitrust Act, indirect
14 purchasers have standing to maintain an action based on the facts alleged in
15 this Complaint. N.D. Cent. Code § 51-08.1-08.

16 243. Defendants contracted, combined or conspired in restraint of, or to
17 monopolize trade or commerce in the market for German vehicles, and
18 established, maintained, or used a monopoly, or attempted to do so, for the
19 purposes of excluding competition or controlling, fixing or maintaining prices
20 for German vehicles, in violation of N.D. Cent. Code §§ 51-08.1-02, 03.

21 244. But for Defendants' conduct set forth herein, the price of
22 Defendants' German vehicles would have been lower, in an amount to be
23 determined at trial.

24 245. Plaintiffs and members of the Class were injured with respect to
25 purchases in North Dakota and are entitled to all forms of relief, including
26 actual damages, treble damages for flagrant violations, costs, reasonable
27 attorneys' fees, and injunctive or other equitable relief.
28

Count Twenty-One

Violation of Oregon’s Antitrust Law

Or. Rev. Stat. § 646.705, *et seq.*

(On Behalf of Plaintiffs and the Oregon Class against all defendants)

246. Plaintiffs re-allege and incorporate by reference each of the paragraphs set forth above as though fully set forth herein.

247. Chapter 646 of the Oregon Revised Statutes generally governs business and trade practices within Oregon. Sections 705 through 899 thereof govern antitrust violations, with the policy to “encourage free and open competition in the interest of the general welfare and economy of the state.” Or. Rev. Stat. § 646.715.

248. Under Oregon law, indirect purchasers have standing under the antitrust provisions of the Oregon Revised Statutes to maintain an action based on the facts alleged in this Complaint. Or. Rev. Stat. § 646.780(1)(a).

249. Defendants contracted, combined, or conspired in restraint of trade or commerce of German vehicles, and monopolized or attempted to monopolize the trade or commerce of German vehicles, in violation of Or. Rev. Stat. § 646.705, *et seq.*

250. But for Defendants’ conduct set forth herein, the price per pound of German vehicles would have been lower, in an amount to be determined at trial.

251. Plaintiffs and members of the Class were injured with respect to purchases of German vehicles within the intrastate commerce of Oregon, or alternatively to interstate commerce involving actual or threatened injury to persons located in Oregon, and are entitled to all forms of relief, including actual damages, treble damages, reasonable attorneys’ fees, expert witness fees and investigative costs, and injunctive relief.

1 Tennessee. All such arrangements, contracts, agreements, or combinations
2 between persons or corporations designed, or which tend, to increase the
3 prices of any such goods, are against public policy, unlawful, and void. Tenn.
4 Code, § 47-25-101.

5 265. Under Tennessee law, indirect purchasers (such as the Tennessee
6 Class) have standing under the Tennessee Trade Practice Acts to maintain an
7 action based on the facts alleged in this Complaint.

8 266. Defendants competed unfairly and colluded by meeting to fix
9 prices, divide markets, and otherwise restrain trade as set forth herein, in
10 violation of Tenn. Code, § 47-25-101, *et seq.*

11 267. Defendant's conduct violated the Tennessee Trade Practice Act
12 because it was an arrangement, contract, agreement, or combination to lessen
13 full and free competition in goods in Tennessee, and because it tended to
14 increase the prices of goods in Tennessee. Specifically, Defendants'
15 combination or conspiracy had the following effects: (1) price competition for
16 German vehicles was restrained, suppressed, and eliminated throughout
17 Tennessee; (2) prices for German vehicles were raised, fixed, maintained and
18 stabilized at artificially high levels throughout Tennessee; (3) Plaintiff and the
19 Tennessee Class were deprived of free and open competition; and (4) Plaintiff
20 and the Tennessee Class paid supra-competitive, artificially inflated prices for
21 German vehicles.

22 268. During the Class Period, Defendants' illegal conduct had a
23 substantial effect on Tennessee commerce as German vehicles were sold in
24 Tennessee.

25 269. The Tennessee Class purchased German vehicles within the State
26 of Tennessee during the Class Period. But for Defendants' conduct set forth
27 herein, the price of German vehicles would have been lower, in an amount to
28 be determined at trial. As a direct and proximate result of Defendants'

1 unlawful conduct, Plaintiff and the Tennessee Class have been injured in their
2 business and property and are threatened with further injury.

3 270. Plaintiffs and members of the Tennessee Class were injured with
4 respect to purchases of German Premium Vehicles in Tennessee and are
5 entitled to all forms of relief available under the law, including return of the
6 unlawful overcharges that they paid on their purchases, damages, equitable
7 relief, and reasonable attorneys' fees.

8 **Count Twenty-Five**

9 **Violation of Utah's Antitrust Act**

10 **Utah Code Ann. § 76-10-911, *et seq.***

11 **(On Behalf of Plaintiffs and the Utah Class against all defendants)**

12 271. Plaintiffs re-allege and incorporate by reference each of the
13 paragraphs set forth above as though fully set forth herein.

14 272. The Utah Antitrust Act aims to "encourage free and open
15 competition in the interest of the general welfare and economy of this state by
16 prohibiting monopolistic and unfair trade practices, combinations and
17 conspiracies in restraint of trade or commerce" Utah Code Ann. § 76-10-
18 3102.

19 273. Under the Utah Antitrust Act, indirect purchasers who are either
20 Utah residents or Utah citizens have standing to maintain an action based on
21 the facts alleged in this Complaint. Utah Code Ann. § 76-10-3109(1)(a).

22 274. Defendants contracted, combined or conspired in restraint of trade
23 or commerce of German vehicles, and monopolized or attempted to
24 monopolize trade or commerce of German vehicles, in violation of Utah Code
25 Ann. § 76-10-3101, *et seq.*

26 275. But for Defendants' conduct set forth herein, the price of
27 Defendants' German vehicles would have been lower, in an amount to be
28 determined at trial.

Count Twenty-Seven

Violation of West Virginia’s Antitrust Act

W. Va. Code § 47-18-1 *et seq.*

(On Behalf of Plaintiffs and the West Virginia Class against all defendants)

283. Plaintiffs re-allege and incorporate by reference each of the paragraphs set forth above as though fully set forth herein.

284. The violations of federal antitrust law set forth above also constitute violations of section 47-18-1 of the West Virginia Code.

285. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination, or conspiracy in unreasonable restraint of trade and commerce and other anticompetitive conduct alleged above in violation of W. Va. Code § 47-18-1, *et seq.*

286. Defendants’ anticompetitive acts described above were knowing, willful and constitute violations or flagrant violations of the West Virginia Antitrust Act.

287. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs and members of the West Virginia Class have been injured in their business and property in that they paid more for their German vehicles than they otherwise would have paid in the absence of Defendants’ unlawful conduct. As a result of Defendants’ violation of Section 47-18-3 of the West Virginia Antitrust Act, Plaintiffs and members of the West Virginia Class seek treble damages and their cost of suit, including reasonable attorneys’ fees, pursuant to section 47-18-9 of the West Virginia Code.

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Count Twenty-Eight

Violation of Wisconsin’s Antitrust Act

Wis. Stat. Ann. § 133.01(01), *et seq.*

(On Behalf of Plaintiffs and the Wisconsin Class against all defendants)

288. Plaintiffs re-allege and incorporate by reference each of the paragraphs set forth above as though fully set forth herein.

289. Chapter 133 of the Wisconsin Statutes governs trust and monopolies, with the intent “to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory business practices which destroy or hamper competition.” Wis. Stat. § 133.01.

290. Under Wisconsin law, indirect purchasers have standing under the antitrust provisions of the Wisconsin Statutes to maintain an action based on the facts alleged in this Complaint. Wis. Stat. 133.18(a).

291. Defendants contracted, combined or conspired in restraint of trade or commerce of German vehicles, and monopolized or attempted to monopolize the trade or commerce of German vehicles, with the intention of injuring or destroying competition therein, in violation of Wis. Stat. § 133.01, *et seq.*

292. But for Defendants’ conduct set forth herein, the price of Defendants’ German vehicles would have been lower, in an amount to be determined at trial.

293. Plaintiffs and members of the Class were injured with respect to purchases of German vehicles in Wisconsin in that the actions alleged herein substantially affected the people of Wisconsin, with at least thousands of consumers in Wisconsin paying substantially higher prices for Defendants’ German vehicles in Wisconsin.

294. Accordingly, Plaintiffs and members of the Class are entitled to all

1 forms of relief, including actual damages, treble damages, costs and
2 reasonable attorneys' fees, and injunctive relief.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class,
6 prays for relief as follows:

- 7 1. An Order appointing Plaintiffs to represent the proposed California
8 Class and Nationwide Class pursuant to Fed. R. Civ. P. 23(a) and
9 designating their counsel as Class Counsel;
- 10 2. A declaration that any applicable statutes of limitations are tolled as
11 alleged herein;
- 12 3. That the Court find the conduct complained of herein constitutes an
13 unreasonable restraint of trade or commerce in violation of Section 1
14 of the Sherman act; a *per se* violation of Section 1 of the Sherman Act;
15 and an unlawful combination, agreement, understanding, and/or
16 concert of action in violation of state unfair competition and
17 consumer protection laws;
- 18 4. An Order enjoining Defendants from continuing, maintaining or
19 renewing the conduct, conspiracy, or combination alleged herein, or
20 from entering into any other conspiracy or combination having a
21 similar purpose or effect, and from adopting or following any
22 practice, plan, program, or device having a similar purpose or effect;
- 23 5. An Order awarding Plaintiffs and the Class restitution and/or
24 disgorgement;
- 25 6. An Order awarding Plaintiffs and the Class compensatory damages;
- 26 7. An Order awarding Plaintiffs and the Class punitive damages;
- 27 8. An Order awarding Plaintiffs and the Class treble damages;

- 1 9. A determination that Defendants are financially responsible for all
- 2 notice and administration costs;
- 3 10. An Order awarding Plaintiffs attorney’s fees, expert witness fees and
- 4 other costs, including pre-judgment and post-judgment interest
- 5 thereon to the extent allowed by law; and
- 6 11. Such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

8 Plaintiffs, on behalf of themselves and the proposed Class, hereby
9 demand a trial by jury as to all matters so triable.

11 Dated: August 21, 2017

CASEY GERRY SCHENK
FRANCAVILLA BLATT & PENFIELD,
LLP

By: s/ David S. Casey, Jr.
DAVID S. CASEY, JR.
Attorneys for Plaintiff

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
Guarav Sharma and Bailly Brownell
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number)
Casey Gerry Schenk Francavilla Blatt and Penfield LLP
110 Laurel St.
San Diego, CA 92101 619.238.1811

DEFENDANTS
Volkswagen AG; Volkswagen Group of America, Inc.; Audi AG; Audi of America, LLC; Dr. Ing. h.c. F. Porsche AG; Porsche Cars of North America, Inc.; Daimler AG; Mercedes-Benz USA, LLC, Mercedes-Ben
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'17CV1678 MMAJLB

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
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
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 (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Sherman Act, Section 1 (15 U.S. Code § 1); RICO (18 U.S.C. § 1962(c) - (d))
Brief description of cause:
price-fixing of German vehicles for sale in US

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ > 5,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
Judge Arleo - 2:17-cv-05440, 2:17-cv-05550, 2:17-cv-05740 (D.N.J.); Judge Breyer - 3:17-cv-04320, 3:17-cv-04320 (N.D.C.A.); Judge Kronstadt - 2:17-cv-05724, 2:17-cv-05865 (C.D.C.A.); Judge Gayles - 0:17-cv-61528 (S.D. Fla.)

DATE 08/21/2017
SIGNATURE OF ATTORNEY OF RECORD s/ David S. Casey, Jr.

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges VW, Audi, Porsche, Others Operate as 'German Auto Cartel'](#)
