

1 BRUCE L. SIMON (CA SBN 96241)
bsimon@pswlaw.com
2 NEIL SWARTZBERG (CA SBN 215133)
nswartzberg@pswlaw.com
3 **PEARSON, SIMON & WARSHAW, LLP**
44 Montgomery Street, Suite 2450
4 San Francisco, California 94104
Telephone: (415) 433-9000
5 Facsimile: (415) 433-9008

6 DANIEL L. WARSHAW (CA SBN 185365)
dwarshaw@pswlaw.com
7 MICHAEL H. PEARSON (CA SBN 277857)
mpearson@pswlaw.com
8 **PEARSON SIMON & WARSHAW, LLP**
15165 Ventura Boulevard, Suite 400
9 Sherman Oaks, California 91403
Telephone: (818) 788-8300
10 Facsimile: (818) 788-8104

11 Additional Counsel Listed on Signature Page

12 *Attorneys for Plaintiffs*

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

15 GLEN REDER and LONNY GOLD,
16 Individually and on Behalf of All
Others Similarly Situated,

17 Plaintiffs,

18 vs.

19 AUDI AG, AUDI OF AMERICA,
20 INC., AUDI OF AMERICA, LLC,
BAYERISCHE MOTOREN WERKE
21 AG, BMW OF NORTH AMERICA,
LLC, DAIMLER AG, MERCEDES-
22 BENZ USA, LLC, MERCEDES-BENZ
U.S. INTERNATIONAL, INC.,
23 MERCEDES-BENZ VANS, LLC, DR.
ING. H.C.F. PORSCHE AG,
24 PORSCHE CARS OF NORTH
AMERICA, INC., VOLKSWAGEN
25 AG, and VOLKSWAGEN GROUP OF
AMERICA, INC.

26 Defendants.

CASE NO. 2:17-cv-05724

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

PEARSON, SIMON & WARSHAW, LLP
44 MONTGOMERY STREET, SUITE 2450
SAN FRANCISCO, CALIFORNIA 94104

1 Plaintiffs and the Classes, by, *inter alia*, causing them to pay unlawfully inflated
2 prices and increased maintenance costs for diesel passenger vehicles manufactured
3 and sold by Defendants (herein “German Diesel Passenger Vehicles”).¹

4 4. Significantly, the European Commission (“EC”) Competition
5 authorities in Brussels and Germany’s Federal Cartel Office have confirmed that
6 they are investigating Defendants’ participation in anticompetitive activities. In
7 fact, two of the three ultimate parent companies in the conspiracy – Volkswagen AG
8 (which controls Audi AG and Porsche AG) and Daimler AG – have already (i)
9 admitted to the EC Competition authorities and Germany’s Federal Cartel Office
10 that they coordinated with co-defendants and/or other unnamed co-conspirators on
11 competitive aspects of their businesses, and (ii) been cooperating with the EC
12 Competition authorities in the hopes of obtaining amnesty or leniency for their
13 anticompetitive misconduct.

14 5. Plaintiffs seek to represent all persons and entities who, from at least
15 since January 1, 2000 through the present (hereinafter referred to as the “Class
16 Period”), purchased or leased a new German Diesel Passenger Vehicle
17 manufactured or sold by any of the Defendants, their co-conspirators, or their
18 subsidiaries or affiliates in the United States.

19 6. Plaintiffs seek, *inter alia*, treble damages and injunctive relief and
20 demand a trial by jury.

21 II. PARTIES

22 A. PLAINTIFFS

23 7. Glen Reder is a resident of Los Angeles County, California who leased
24 _____

25 ¹ German Diesel Passenger Vehicles includes those vehicles with diesel engines
26 manufactured by any of the Defendants and not purchased as a commercial vehicle,
27 including but not limited to sedans, coupes, hatchbacks and wagons, as well as
28 SUVs/crossovers, vans and trucks.

1 a German Diesel Passenger Vehicle, specifically a 2015 Mercedes Benz ML 250
2 BlueTEC 4Matic diesel, at an unlawfully inflated price during the Class Period.

3 8. Lonny Gold is a resident of Highland Park, Illinois who leased a
4 German Diesel Passenger Vehicle, specifically a 2015 BMW 535d xDrive diesel, at
5 an unlawfully inflated price during the Class Period.

6 **B. DEFENDANTS**

7 **(i) The Audi Defendants**

8 9. Defendant Audi AG is a German corporation with its principal place of
9 business in Ingolstadt, Germany, and is the parent company of Audi of America,
10 Inc. and Audi of America, LLC. Audi AG is also a wholly-owned subsidiary of
11 Volkswagen AG. Audi AG designs, develops, manufactures, distributes and sells
12 German Diesel Passenger Vehicles, which were purchased by consumers throughout
13 the United States, including this District during the Class Period. Audi AG directs
14 the activities of its subsidiaries, which act as its agents in the selling of German
15 Diesel Passenger Vehicles, including throughout the United States during the Class
16 Period.

17 10. Defendant Audi of America, Inc. is incorporated in New Jersey, and
18 does business in all fifty states and the District of Columbia, with its principal place
19 of business in Herndon, Virginia; it advertises, markets, and sells Audi diesel
20 vehicles throughout the United States, including in this District during the Class
21 Period.

22 11. Defendant Audi of America, LLC is incorporated in Delaware, and
23 does business in all fifty states and the District of Columbia, with its principal place
24 of business in Herndon, Virginia; it advertises, markets, and sells Audi diesel
25 vehicles throughout the United States, including in this District during the Class
26 Period.

27 **(ii) The BMW Defendants**

28 12. Defendant Bayerische Motoren Werke AG is a German corporation

1 with its principal place of business in Munich, Germany. BMW AG designs,
2 develops, manufactures, distributes and sells German Diesel Passenger Vehicles,
3 which were purchased by consumers throughout the United States, including this
4 District during the Class Period. BMW AG directs the activities of its subsidiaries,
5 which act as its agents in the selling of German Diesel Passenger Vehicles,
6 including throughout the United States during the Class Period.

7 13. Defendant BMW of North America, LLC is a Delaware limited liability
8 corporation with its principal place of business in Woodcliff Lake, New Jersey; it
9 advertises, markets, and sells BMW diesel vehicles throughout the United States,
10 including in this District during the Class Period. BMW of North America is the
11 United States importer of BMW vehicles.

12 **(iii) The Daimler-Mercedes Defendants**

13 14. Defendant Daimler AG is a German corporation with its principal place
14 of business in Stuttgart, Germany, and is the parent company of Mercedes-Benz
15 USA, LLC (which acts as the sole distributor for Mercedes-Benz vehicles in the
16 United States). Daimler AG designs, develops, manufactures, distributes and sells
17 German Diesel Passenger Vehicles, which were purchased by consumers throughout
18 the United States, including in this District during the Class Period. Daimler AG
19 directs the activities of its subsidiaries, which act as its agents in the selling of
20 German Diesel Passenger Vehicles, including throughout the United States during
21 the Class Period.

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

28 16. Defendant Mercedes-Benz U.S. International, Inc. is a corporation

1 organized and existing under the laws of Alabama, with its principal place of
 2 business in Vance, Alabama; it manufactures Daimler-Mercedes diesel vehicles
 3 distributed and sold throughout the United States during the Class Period.
 4 Mercedes-Benz U.S. International, Inc. is a wholly-owned subsidiary of Daimler
 5 AG.

6 17. Defendant Mercedes-Benz Vans, LLC is a Delaware limited liability
 7 corporation with its principal place of business in Ladson, South Carolina; it also
 8 manufactures Daimler-Mercedes diesel vehicles distributed and sold throughout the
 9 United States during the Class Period. Mercedes-Benz Vans, LLC is a wholly-
 10 owned subsidiary of Daimler AG.

11 **(iv) The Porsche Defendants**

12 18. Defendant Dr. Ing. h.c.F. Porsche AG is a German corporation with its
 13 principal place of business in Stuttgart, Germany. Porsche AG is also a wholly-
 14 owned subsidiary of Volkswagen AG. Porsche AG designs, develops,
 15 manufactures, distributes and sells German Diesel Passenger Vehicles, which were
 16 purchased by consumers throughout the United States, including this District during
 17 the Class Period. Porsche AG directs the activities of its subsidiaries, which act as
 18 its agents in the selling of German Diesel Passenger Vehicles, including throughout
 19 the United States during the Class Period.

20 19. Defendant Porsche Cars North America, Inc. is incorporated in
 21 Delaware, and does business in all fifty states and the District of Columbia, with its
 22 principal place of business in Atlanta, Georgia; it advertises, markets, and sells
 23 Porsche diesel vehicles throughout the United States, including in this District
 24 during the Class Period. Porsche Cars North America, Inc. is a wholly-owned U.S.
 25 subsidiary of Porsche AG. Porsche Cars North America, Inc. maintains a network
 26 of 189 dealers throughout the United States.

27 **(v) The Volkswagen Defendants**

28 20. Defendant Volkswagen AG is a German corporation with its principal

1 place of business in Wolfsburg, Germany, and is the parent company of Volkswagen
 2 Group of America, Inc., Audi AG, and Porsche AG. Volkswagen AG designs,
 3 develops, manufactures, distributes and sells German Diesel Passenger Vehicles,
 4 which were purchased by consumers throughout the United States, including this
 5 District during the Class Period. Volkswagen AG directs the activities of its
 6 subsidiaries, which act as its agents in the selling of German Diesel Passenger
 7 Vehicles, including throughout the United States during the Class Period. In 2016,
 8 Volkswagen AG was the largest auto manufacturer in the world, with reported sales
 9 revenue of more than \$250 billion.

10 21. Defendant Volkswagen Group of America, Inc. is incorporated in New
 11 Jersey, and conducts business in all fifty states and the District of Columbia, with its
 12 principal place of business in Herndon, Virginia. Volkswagen Group of America,
 13 Inc. advertises, markets, and sells Volkswagen diesel vehicles throughout the United
 14 States, including in this District during the Class Period.

15 **C. DEFENDANTS' CO-CONSPIRATORS AND AGENTS**

16 **(i) The Bosch Entities**

17 22. Robert Bosch GmbH is a German limited liability company with its
 18 principal place of business in Gerlingen, Germany, and is the parent company of
 19 Robert Bosch LLC. Robert Bosch GmbH directs the activities of its subsidiaries
 20 and with Robert Bosch LLC, designs, manufactures, develops, and supplies
 21 automotive technology and parts, including as provided to the Defendants for use in
 22 German Diesel Passenger Vehicles, such as for use in those vehicles diesel
 23 emissions systems, among others.

24 23. Robert Bosch LLC is a Delaware limited liability company with its
 25 principal place of business in Farmington Hills, Michigan. Robert Bosch LLC is a
 26 wholly owned subsidiary of Robert Bosch GmbH, and designs, manufactures,
 27 develops, and supplies automotive technology and parts, including as provided to
 28 the Defendants for use in German Diesel Passenger Vehicles, such as for use in

1 those vehicles diesel emissions systems, among others.

2 **(ii) Unnamed Co-Conspirators and Agents**

3 24. Various persons and/or firms not named as Defendants herein have
4 participated as co-conspirators in the violations alleged herein and have performed
5 acts and made statements in furtherance thereof. The Defendants are jointly and
6 severally liable for the acts of their co-conspirators whether named or not named as
7 Defendants in this Complaint.

8 25. Each Defendant acted as the agent or joint venturer of or for other
9 Defendants with respect to the acts, violations and common course of conduct
10 alleged by Plaintiffs.

11 **III. JURISDICTION AND VENUE**

12 26. Plaintiffs bring this action against Defendants under (i) Section 16 of
13 the Clayton Act (15 U.S.C. § 26) seeking equitable and injunctive relief for
14 violations of Section 1 of the Sherman Act (15 U.S.C. § 1); and (ii) the state
15 antitrust, unfair competition, consumer protection, unfair trade practice and unjust
16 enrichment laws set forth, seeking damages, restitution and other relief for
17 violations of those laws. Therefore, this Court has jurisdiction over the subject
18 matter of this action pursuant to: (i) Section 16 of the Clayton Act (15 U.S.C. § 26),
19 Section 1 of the Sherman Act (15 U.S.C. § 1), and 28 U.S.C. §§ 1331, 1137; and,
20 (ii) for the state law claims, pursuant to 28 U.S.C. §§ 1332(d) and 1367, based on
21 the fact that this is class action in which the matter or controversy exceeds the sum
22 of \$5,000,000, exclusive of interest and costs, and in which some members of the
23 proposed Classes (see below) are citizens of a state different from the Defendants.

24 27. Venue is proper in this District pursuant to Section 12 of the Clayton
25 Act (15 U.S.C. § 22), and 28 U.S.C. §§ 1391 (b), (c), and (d), based on the fact that
26 a substantial part of the events giving rise to Plaintiffs' claims occurred in this
27 District, a substantial portion of the affected interstate trade and commerce
28 discussed below has been carried out in this District, and one or more of the

1 Defendants are licensed to do business in, are doing business in, had agents in, or
2 are found or transact business in this District.

3 28. This Court has personal jurisdiction over each of the Defendants
4 because each Defendant, either directly or through the ownership or control of its
5 United States subsidiaries: (a) transacted business in the United States, including in
6 this District; (b) directly or indirectly sold or marketed substantial quantities of
7 German Diesel Passenger Vehicles throughout the United States, including in this
8 District; (c) had substantial aggregate contacts with the United States as a whole,
9 including in this District; or (d) was engaged in an illegal antitrust conspiracy that
10 was directed at, and had a direct, substantial, reasonably foreseeable and intended
11 effect of causing injury to, the business or property of persons and entities residing
12 in, located in, or doing business throughout the United States, including in this
13 District. Defendants conduct business throughout the United States, including in
14 this District, and they have purposefully availed themselves of the laws of the
15 United States.

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

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

25 **IV. INTERSTATE COMMERCE AND ANTITRUST INJURY**

26 31. The Defendants' business activities substantially affected interstate
27 trade and commerce in the United States and caused antitrust injury in the United
28 States to Plaintiffs and members of the Classes.

1 32. During the Class Period each Defendant manufactured, distributed
2 and/or sold German Diesel Passenger Vehicles in the United States, in a continuous
3 and uninterrupted flow of interstate commerce.

4 33. During the Class Period, the Defendants were leaders in the market for
5 diesel passenger vehicles, both globally and in the United States.

6 34. The business activities of the Defendants substantially affected
7 interstate trade and commerce in the United States, and caused antitrust injury in the
8 United States to Plaintiffs and members of the Classes.

9 **V. FACTUAL ALLEGATIONS**

10 **A. THE GERMAN VEHICLE MANUFACTURERS' COLLUSION**

11 35. As recently reported by leading news outlets, including in an
12 investigative cover story in the German-language weekly publication *Der Spiegel*, at
13 least since the 1990s, Defendants have regularly met to coordinate on costs, prices,
14 suppliers, technical development and other competitive aspects of everything from
15 brake controls and chassis to electronics and car assembly for German Diesel
16 Passenger Vehicles.

17 36. This misconduct is coming to light in the wake of scandals related to
18 many of the Defendants cheating to avoid diesel emissions laws and an investigation
19 into collusion on the price of steel, and government authorities who investigated
20 those earlier matters have confirmed that they are now looking into this far-reaching
21 misconduct.

22 37. Throughout the conspiracy, the Defendants each sent representatives
23 from different areas of expertise to meet together in working groups (and sub-
24 working groups) which were organized and broken down into primary development
25 areas such as "drive," "construction/body," "chassis," "electrics/electronics," and
26 "complete vehicle."

27 38. The Defendants met, *inter alia*, at corporate offices in Ingolstadt,
28 Munich, Stuttgart and Wolfsburg and at the big automobile trade shows in Geneva,

1 Frankfurt and Paris.

2 39. In such groups (and sub-groups), Defendants would exchange
3 commercially-sensitive information and reach agreements that went well beyond
4 permissible areas, such as necessary industry standards.

5 40. The Defendants' collusion was far-reaching, with the view that
6 whenever a Defendant manufacturer introduced a breakthrough technology, steps
7 needed to be taken to ensure that the other Defendants were able to offer that
8 technology as well. Instead of pursuing legal (albeit expensive) methods, like
9 reverse-engineering, to understand and compete with another Defendant's vehicles,
10 the breakthrough information was shared among Defendants.

11 41. For example, regarding the development of soft-top convertibles,
12 minutes from a meeting in Bad-Kissingen show that Defendants discussed the cost,
13 weight, technical risks, and crash issues, and then agreed that soft-top convertible
14 roofs should only be permitted to operate at vehicle speeds below 50 km/h. In other
15 words, the Defendants agreed that none of them would develop a soft-top roof that
16 could be operated at higher speeds regardless of whether the technology would
17 make it possible and safe – the customers would never know.

18 42. As one of the Defendant managers who participated in the working
19 group that addressed the drag co-efficient for vehicles explained: "This motto of
20 'giving and taking' is correct and, in this manner, it is also experienced in a friendly
21 manner in the working group."

22 43. But the Defendants' collusion was not limited to technical
23 development. Sometimes the coordination was on supply-chain issues; such as, the
24 selection of a supplier. One such instance was at a September 2013 meeting of
25 Defendant managers in the air suspension working group. Defendants together
26 reviewed (and criticized) the performance of ZF Friedrichshafen AG, one of the
27 biggest suppliers in that segment – with Defendants' managers giving the supplier
28 similar bad marks for both order processing and the quality of product.

1 44. One supplier who worked with the Defendants explained that it was
2 always “fishy” that all five Defendant car companies presented identical technical
3 specifications for pollution control devices.

4 45. Also, for a September 2014 meeting in Bayreuth, when the Defendant
5 managers for the diesel motors working group were discussing a sensor to be used in
6 a diesel engine, one of the managers explained that it was less important that they
7 vote on the particular sensor to be developed, and more critical that there be
8 consensus on the supplier – “Our agreement that a sensor needs to be developed is
9 not the critical issue, but the joint definition of the supplier is.”

10 46. Defendants were also aware of the antitrust implications of their
11 working groups. As one Volkswagen manager wrote in an e-mail, there was
12 “considerable concern that there might be problems if a competitor [outside
13 Defendants] were to make a corresponding complaint” to antitrust authorities.

14 **B. COLLUSION ON ADBLUE TANKS**

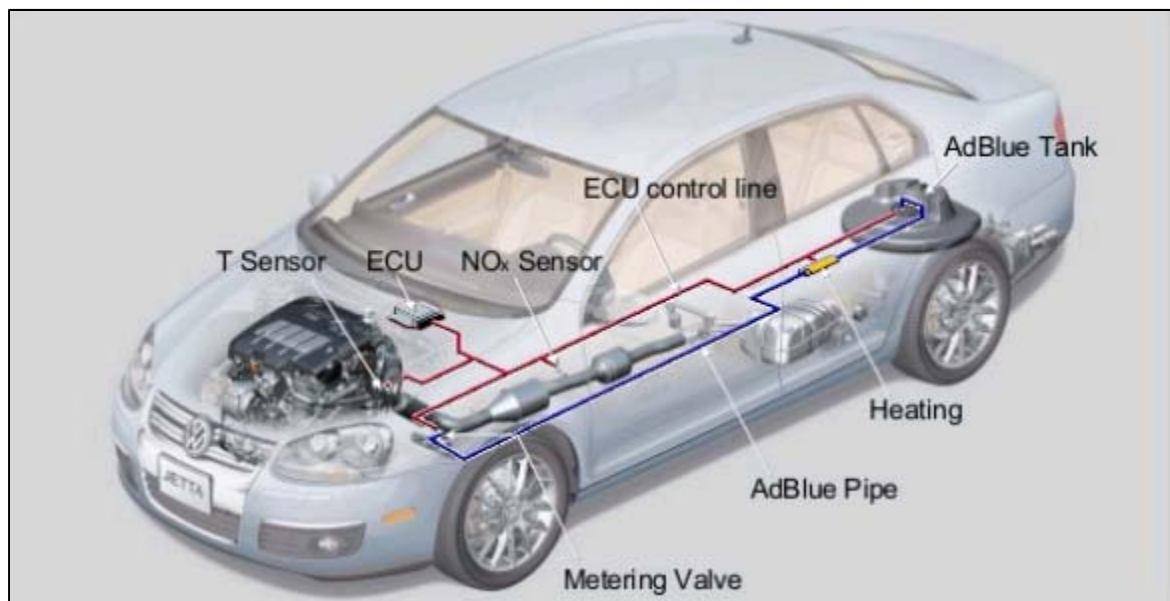
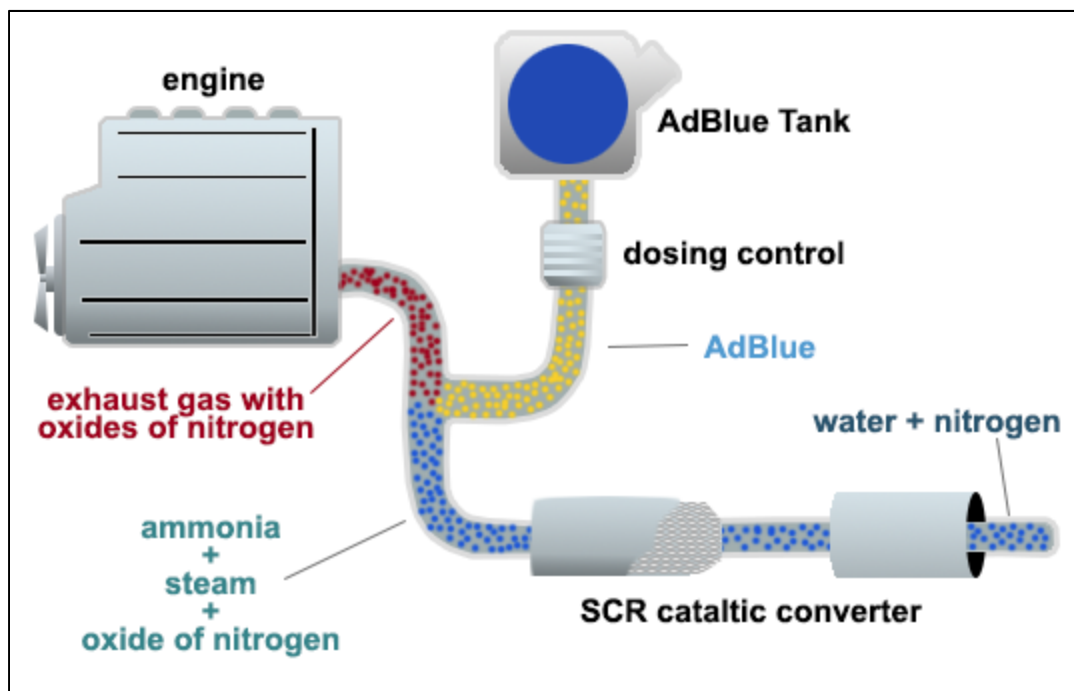
15 47. Another example of the coordination and agreement reached by the
16 Defendants is in connection with the diesel emissions cleaning systems that stand at
17 the heart of the recent admissions and investigations regarding Defendants
18 manipulating those systems to circumvent diesel pollution laws.

19 48. Starting in the early-2000s, facing calls from consumers and
20 governments to curtail automobile pollutants, in particular greenhouse gas carbon
21 dioxide, the Defendants needed to develop solutions for their vehicles. Japanese
22 manufacturers had developed hybrid electric-gas vehicles, but the Defendants had
23 not successfully developed viable hybrid technologies. Instead, they looked to
24 reinvent their vehicles powered by diesel engines. While diesel engines had more
25 limited carbon dioxide emissions than gasoline engines, diesel engines produce
26 nitrogen oxide, another potent source of pollution.

27 49. To solve that problem, the Defendants looked to refine an established
28 scientific method for treating the nitrogen oxide emissions (mixing them with a

1 pollution-neutralizing mixture), and then branding their diesel vehicles as “clean
 2 diesels.” Specifically, a urea mixture (branded AdBlue) could combine with
 3 nitrogen oxide emissions and then split the emissions into the harmless components
 4 of water and nitrogen.

5 50. The following images depict this treatment system:



27 ///

28 ///

1 51. But as with numerous other vehicles systems and components, how the
2 Defendants developed and deployed their individual solutions for using urea to
3 clean nitrogen oxide emissions was not left to competition and market forces.

4 52. Instead, at numerous meetings during the Class Period, starting around
5 2006, the Defendants discussed and agreed on, *inter alia*, the size and suppliers of
6 the tanks for AdBlue, as well as pricing matters and the frequency of maintenance
7 for their diesel cleaning systems.

8 53. Large AdBlue tanks could treat a greater volume of pollutants, but
9 large tanks would have been expensive. So, the Defendants agreed on small tanks.

10 54. For example, at a meeting of the Defendants' working group of
11 "chassis" managers in Sindelfingen in April 2006, one of the managers reminded the
12 others that it was absolutely necessary to have a "coordinated approach" with
13 respect to the size of AdBlue tanks, and that according to an established protocol of
14 the coordinating working groups, each Defendant manufacturer could not be
15 permitted to simply do what it wanted with respect to tank size.

16 55. Even though a larger tank would allow more nitrogen oxide emissions
17 to be treated, even though the amount of AdBlue in a small tank would prove
18 insufficient to properly clean the nitrogen oxide emissions, and even though the
19 Defendants understood that even greater governmental restrictions on the levels of
20 nitrogen oxide emissions would likely be imposed in the future, the Defendants still
21 agreed to have only small tanks – 16 liters for diesel engines in vehicles for the U.S.
22 market (and 8 liters for the European market).

23 56. At such meetings the Defendants also discussed and agreed on pricing
24 matters for AdBlue tanks; for example, determining in one of their working group
25 meetings that the small tanks would save each automaker approximately €80 per
26 vehicle.

27 57. The Defendants further agreed that the AdBlue tanks should, if
28 possible, be produced by only two manufacturers and installed in such a manner to

1 prevent refilling by the end-use customers.

2 58. The Defendants' collusion on AdBlue tanks not only adversely
 3 impacted consumers in the form of, *inter alia*, inflated prices and increased
 4 maintenance costs, but as pollution laws became more restrictive the collusion on
 5 the AdBlue tanks led to some of the Defendants developing schemes to evade such
 6 laws. For example, after 2010, Volkswagen did not want to allow Defendants to
 7 offer varying, larger AdBlue tanks because doing so might alert U.S. authorities that
 8 small AdBlue tanks were not be sufficient to properly clean diesel emissions; it
 9 feared that offering different-sized AdBlue tanks would cause U.S. emissions
 10 regulators to question how some companies were getting away with less AdBlue
 11 while others needed substantially more AdBlue to clean their diesel emissions.
 12 Volkswagen, for its part, had solved the cartel-created problem of having only a 16
 13 liter AdBlue tank by designing the now well-known software "defeat device" for
 14 vehicles from Volkswagen. That device sensed when a vehicle was being emissions
 15 tested, and made emissions control adjustments so that the vehicle's pollution output
 16 would be lower than that during real-world driving thereby violating U.S. emissions
 17 standards.

18 **C. GOVERNMENT INVESTIGATIONS INTO COLLUSION ON**
 19 **THE GERMAN DIESEL PASSENGER VEHICLES**

20 59. The same news outlets that first reported on the Defendants regularly
 21 meeting to coordinate on costs, prices, suppliers, technical development and other
 22 competitive aspects of their respective vehicle businesses also reported that German
 23 and European competition authorities are investigating such conduct. Then, after
 24 that reporting, on July 22, 2017, the EC Competition authorities in Brussels
 25 announced that it and the German Federal Cartel Office had received information on
 26 Defendants' coordinated activities, and the EC was investigating the allegations of
 27 an antitrust cartel among the Defendants.

28 60. As part of its investigation, the EC has already seized documents from

1 the Defendants and started interviewing witnesses, and Volkswagen has also
2 searched for and provided documents in connection with the alleged cartel to both
3 the EC and German authorities. The materials submitted by Volkswagen indicate
4 that Defendants entered into agreements regarding, *inter alia*, brake systems, air
5 suspensions, clutches, and diesel engines.

6 61. Moreover, there is reportedly now a contest between Volkswagen AG
7 (which controls both Audi AG and Porsche AG) and Daimler AG to cooperate with
8 EC and German antitrust authorities in the hopes of obtaining amnesty or leniency
9 for their misconduct. Daimler AG was reportedly first to approach those authorities,
10 but Volkswagen AG may still be eligible for some leniency in exchange for
11 cooperation.

12 **D. DEFENDANTS' HISTORY OF INVESTIGATIONS AND**
13 **VIOLATIONS OF THE LAW**

14 62. Many of the Defendants have recently been involved in automotive
15 industry scandals; in particular efforts to evade pollution laws, including U.S. laws.

16 63. As noted above, in 2015, Volkswagen AG admitted that it cheated
17 diesel emissions tests, and was the target of regulatory investigations in multiple
18 countries, including the United States, where it paid more than \$20 billion in
19 criminal penalties and civil restitution. As noted above, Volkswagen's scheme to
20 cheat emissions tests had its foundation in Defendants' collusion on AdBlue tanks.

21 64. Also, in the past few months, German prosecutors have been
22 investigating efforts by Daimler AG, Porsche AG, and Robert Bosch GmbH to
23 implement diesel emissions cheating schemes similar to Volkswagen and/or to
24 facilitate that scheme.

25 65. In fact, in just the past few days (July 2017), *Der Spiegel* has further
26 reported that documents submitted to European competition authorities by one or
27 more of the Defendants show that Bosch was working with all of the Defendants to
28 limit the amount of AdBlue used to clean diesel emissions – because vehicles had

1 such a limited supply due to the small size of their AdBlue tanks. That coordination
 2 between Bosch and the Defendants was taken with the aim of ensuring that pollution
 3 regulators, such as the California Air Resources Board (“CARB”) and the United
 4 States Environmental Protection Agency (“EPA”), did not second-guess the diesel
 5 emissions from German Diesel Passenger Vehicles.

6 66. For example, in a letter written by a Volkswagen manager (in October
 7 2006) after a meeting with Bosch and the Defendants, the manager explained that
 8 everyone wanted a limit on the amount of AdBlue to be injected “because of the
 9 limited size of the urea tanks, [but] [n]obody wants to report the real motivation of
 10 this limitation to the authorities (CARB, EPA).” Similarly, an email (from 2008) to
 11 an Audi manager regarding a meeting among the Defendants indicated that the
 12 participants had confirmed that “this issue [limiting use of the pollutant-neutralizer
 13 AdBlue] should not be mentioned in any way to the US authorities EPA and CARB
 14 so as not to jeopardize the start (launch) in the USA.”

15 67. Also this past week, German authorities have ordered that thousands of
 16 Porsche vehicles (Cayenne model SUVs) with “defeat devices” (similar to the
 17 Volkswagen devices discussed above) be taken off the road.

18 68. In addition, in 2016, European truck makers Daimler and Volkswagen-
 19 owned MAN, DAF, Iveco, and Volvo-Renault were fined by EC authorities €2.93
 20 billion in connection with a conspiracy that not only fixed prices of the truck, but
 21 also stuck consumers with the costs of complying with emissions rules. All of the
 22 companies paid record fines, except Volkswagen-owned MAN, which received
 23 leniency for reporting the misconduct to antitrust authorities.

24 **E. THE CHARACTERISTICS OF THE DIESEL PASSENGER**
 25 **VEHICLES MARKET SUPPORT THE EXISTENCE OF THE**
 26 **CONSPIRACY**

27 69. The following characteristics of the diesel passenger vehicle market in
 28 the United States support the existence of the conspiracy: (i) high barriers to entry;
 (ii) high concentration of manufacturers; (iii) inelasticity of demand; and (iv)

1 opportunities to conspire.

2 (i) High Barriers to Entry

3 70. In a conspiracy that lowers costs for manufacturers and increases the
4 price for consumers, market forces would typically attract new entrants seeking to
5 exploit the pricing gap created by that conspiracy’s supracompetitive pricing. But
6 when there are high barriers to entry for an industry, new manufacturers outside the
7 conspiracy are less likely to enter the market. So, barriers to entry are a key
8 component to facilitating the formation and continuation of a price-fixing
9 conspiracy.

10 71. In the diesel passenger vehicle market, there are high barriers to entry,
11 due to high capital investment costs for plants, machinery, and technical expertise,
12 including a high degree of technical sophistication and relative scarcity for those
13 with experience in those areas, as well as significant energy, transportation,
14 distribution costs, among others.

15 (ii) High Concentration of Manufacturers

16 72. A highly concentrated market facilitates and fosters collusion because,
17 *inter alia*, participants are better able to coordinate on issues and increase their gains
18 from collusion.

19 73. The Defendants have controlled virtually all of the diesel passenger
20 vehicles market in the United States throughout the Class Period. For example, in
21 2014, they held 95% of that market share – the Volkswagen-controlled entities
22 (VW, Audi, Porsche) accounted for approximately 70% , BMW accounted for
23 approximately 15%, and Daimler-Mercedes accounted for approximately 10%.

24 ///

25 ///

26 ///

27 ///

28 ///

1 74. Defendants’ market share for diesel passenger vehicles sold in the
2 United States (from 2010 through the first half of 2017) is reflected in the following
3 table:

4 **Shares of Diesel Vehicle Sales in U.S., 2010 - June 2017**

	2010	2011	2012	2013	2014	2015	2016 1H	2017
5 Volkswagen	73.7%	75.0%	79.0%	78.9%	70.2%	44.4%	0.0%	18.6%
6 BMW	14.7%	10.8%	8.8%	6.8%	14.5%	7.5%	3.4%	4.5%
7 Daimler	9.5%	14.1%	12.3%	12.1%	9.8%	5.6%	1.8%	0.1%
Jaguar Land Rover	0.0%	0.0%	0.0%	0.0%	0.0%	0.9%	5.3%	12.1%
8 Chrysler	2.1%	0.1%	0.0%	0.0%	1.2%	39.6%	43.6%	3.3%
9 GM	0.0%	0.0%	0.0%	2.2%	4.3%	2.1%	9.3%	13.0%
Ford	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	36.5%	48.4%
10 Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

11 75. From 2000 through 2004, based on fuel economy data kept by the EPA,
12 Defendants’ market share for diesel passenger vehicles sold in the United States was
13 100% – Volkswagen was the only manufacturer of such vehicles during that time.

14 76. During the time that the conspiracy took place, including as the result
15 of their promoting their “clean diesel” passenger vehicles, the Defendants saw their
16 sales substantially increase – from just over 5% of all U.S. vehicle sales in 2000 to
17 more than 9% in 2012.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

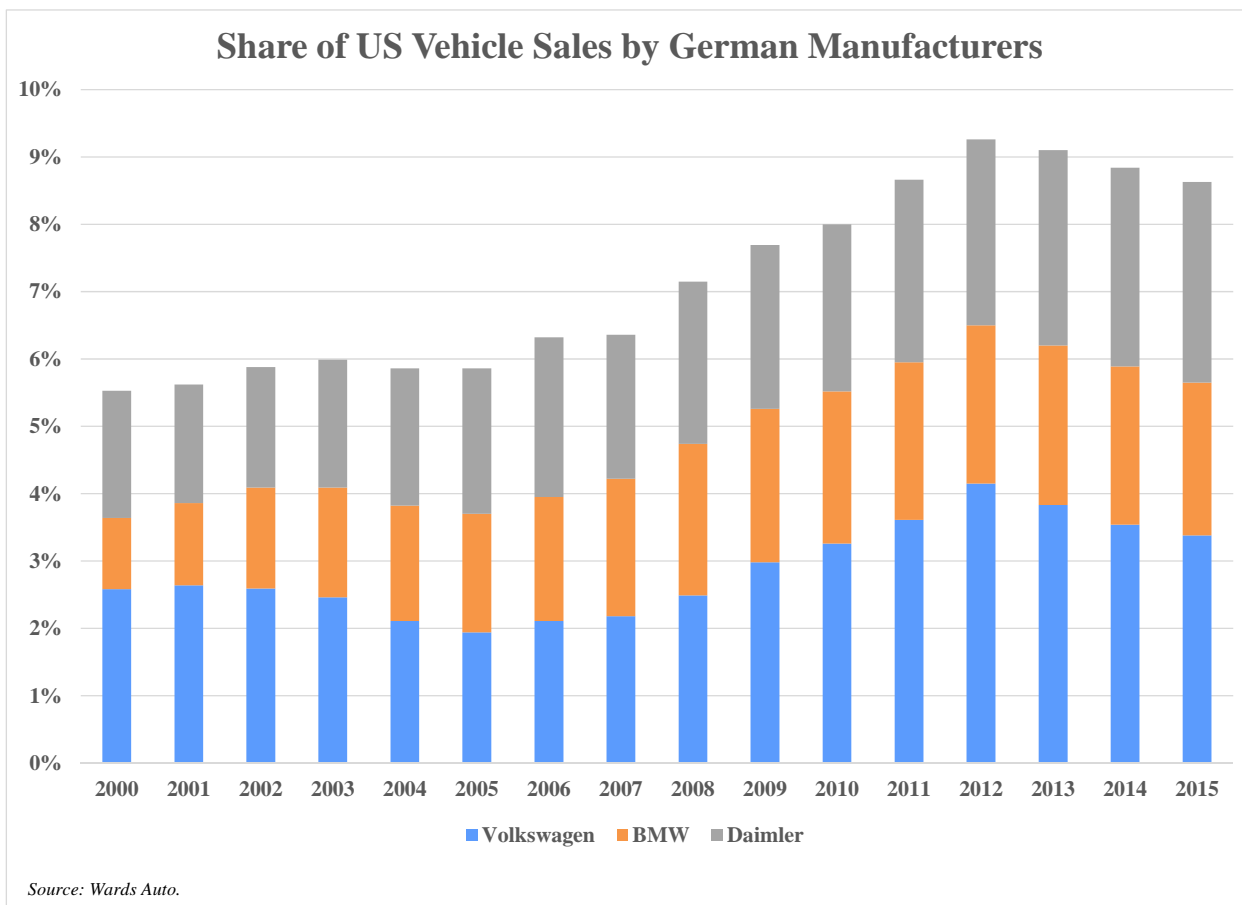
26 ///

27 ///

28 ///

PEARSON, SIMON & WARSHAW, LLP
44 MONTGOMERY STREET, SUITE 2450
SAN FRANCISCO, CALIFORNIA 94104

1 77. A chart reflecting the Defendants’ market share in the United States is
 2 reflected in the following graph:



18 78. U.S. sales revenues for the Defendants (German automakers) also
 19 increased during this time period. After a dip during the recession of 2009, sales
 20 revenues began to increase significantly, from \$55 million in 2009 to \$110 million
 21 in 2015.

22 ///

23 ///

24 ///

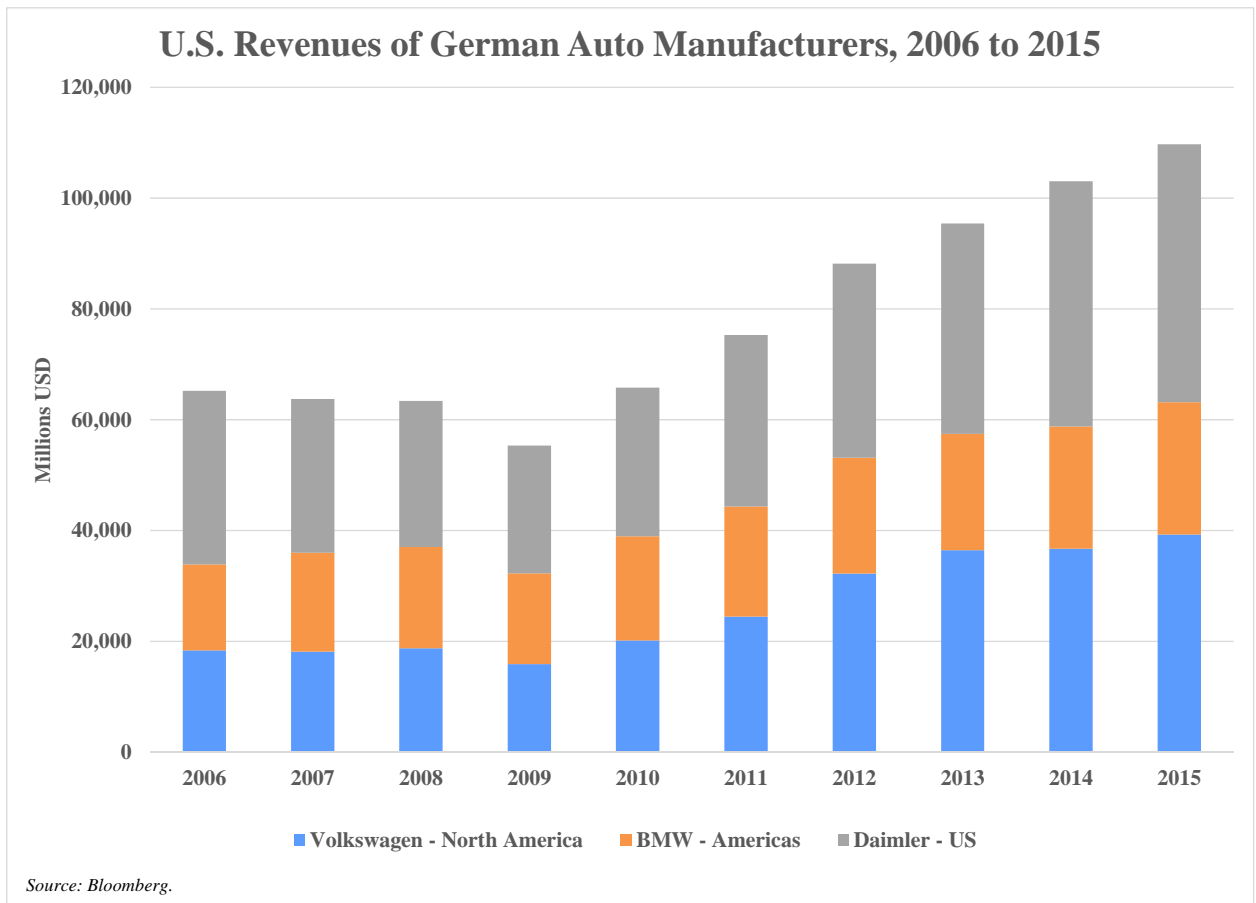
25 ///

26 ///

27 ///

28 ///

1 79. A chart reflecting that increase in sales revenue in the United States is
 2 reflected in the following graph:



80. It is also well-established that the Defendants were able to obtain a
 premium for vehicles with diesel engines during the Class Period. For instance,
 according to New Car Test Drive (<https://www.newcartestdrive.com>), the MSRP for
 a 2014 BMW 328i (gasoline engine) was \$37,100, while the diesel version (328d
 model) was \$38,600. Similarly, a standard gasoline engine 2014 GLK-Class
 Mercedes Benz had an MSRP of \$37,480, while the BlueTec (diesel) model was
 priced at \$38,980.

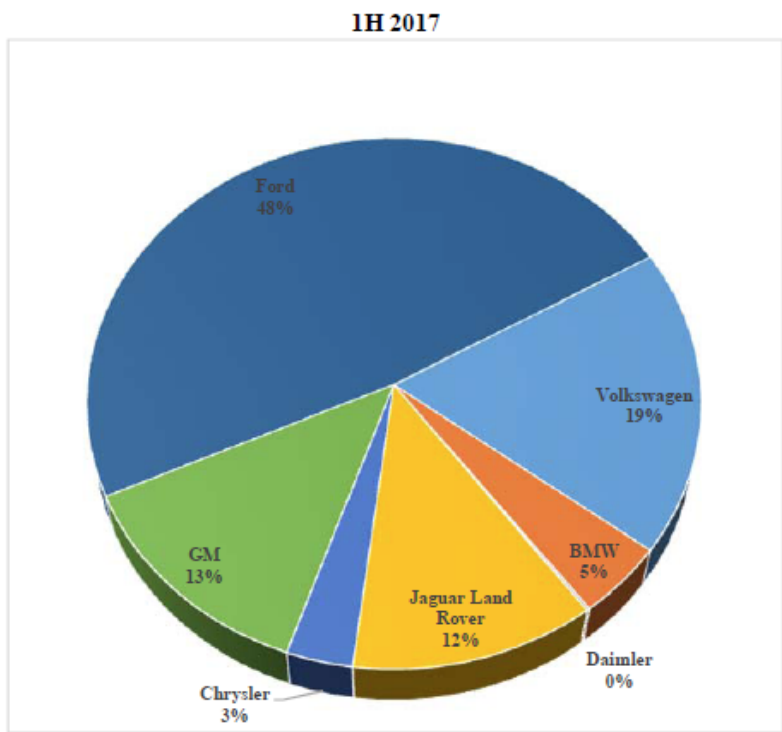
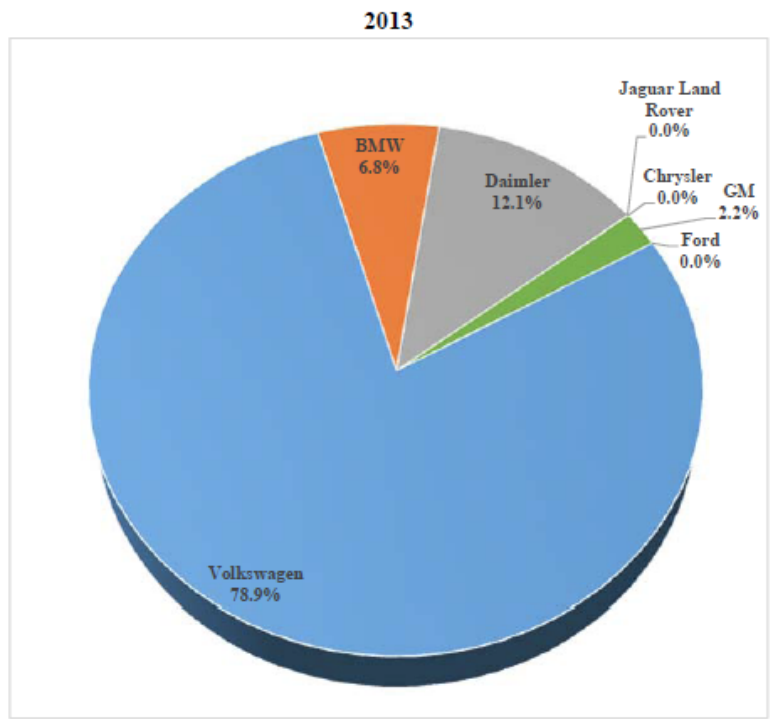
///
 25

///
 26

///
 27

///
 28

1 81. In the wake of the diesel emissions scandals that started to come to
 2 light in 2015, the Defendants’ market share of diesel passenger vehicles sold in the
 3 United States has collapsed; for example in 2013 the Defendants’ market share
 4 accounted for more than 95%, but by the second half of 2017 it accounted for less
 5 than 25%.



PEARSON, SIMON & WARSHAW, LLP
 44 MONTGOMERY STREET, SUITE 2450
 SAN FRANCISCO, CALIFORNIA 94104

1 **(iii) Inelasticity of Demand**

2 82. In order for collusion to succeed in obtaining profits from raising prices
3 above competitive levels, demand must be relatively inelastic at competitive prices.
4 If not, increased prices will result in declining sales, revenues and profits, because
5 customers will purchase substitute products or stop buying altogether.² Inelastic
6 demand, therefore, is a market characteristic that facilitates collusion, by allowing
7 producers to raise their prices without triggering customer substitution and loss of
8 sales revenue.

9 83. Demand for German Diesel Passenger Vehicles is highly inelastic
10 because there are no close substitutes for such vehicles. In particular, purchasers of
11 these vehicles are attracted to the German engineering combined with the vehicles
12 being “green.”

13 **(iv) Opportunities to Conspire**

14 84. As noted above, through the conspiracy, Defendants (and their co-
15 conspirators) attended industry events that provided the opportunity to meet,
16 disguise their improper discussions, and perform acts in furtherance of the
17 conspiracy.

18 85. In addition to meeting, as noted above, at each other’s corporate offices
19 and at auto shows, Defendants also used the cover of at least two official
20 associations, the German Association of the Automotive Industry (“VDA”) and the
21 Emissions Center of the German Automotive Industry (“ADA”), to carry out their
22 conspiracy.

23 _____
24
25 ² “Elasticity” describes the sensitivity of supply and demand to changes in one or the
26 other. Demand is said to be “inelastic” if an increase in the price of a product results
27 in only a small decline in the quantity sold of that product; i.e. continue to purchase
28 despite a price increase because they cannot find alternative, cheaper products of
similar quality.

1 86. With respect to the VDA (which includes foreign suppliers and foreign-
2 owned carmakers, such as Ford and Opel), the Defendants would attend official
3 meetings, but the Defendants' working group managers would then operate outside
4 of the official VDA meetings, not including the foreign suppliers or foreign-owned
5 car manufacturers.

6 87. With respect to the ADA, which the Defendants also insisted needed to
7 exclude foreign-owned car manufacturers, the Defendants used the cover of a
8 research facility (partially funded by government entities) to improperly coordinate
9 on their diesel vehicles.

10 88. Volkswagen has acknowledged that, "over 1000 meetings have taken
11 place over the last five years."

12 **F. PLAINTIFFS' CLAIMS ARE NOT TIME-BARRED**

13 89. Plaintiffs and members of the Classes had no knowledge of the
14 conspiracy alleged herein or facts sufficient to put them on inquiry notice until, at
15 the earliest, July 21, 2017 – the date when *Der Spiegel* reported on the Defendants'
16 conduct alleged herein.

17 90. Before that time, Plaintiffs and members of the Classes were not aware
18 of the Defendants' unlawful conduct, and did not know that they were paying
19 supracompetitive prices and increased maintenance costs for German Diesel
20 Passenger Vehicles.

21 91. There was no public information available to Plaintiffs and members of
22 the Classes before *Der Spiegel* reported on Volkswagen disclosing its coordination,
23 as far back as the 1990s, with the other major German auto manufacturers (i.e., the
24 other Defendants) on costs, pricing, suppliers, technical development and other
25 competitive aspects of everything from brake controls and chassis to electronics and
26 car assembly.

27 92. In addition, Plaintiffs and members of the Classes did not discover and
28 could not discover through the exercise of reasonable diligence the existence of the

1 conspiracy alleged herein until July 21, 2017.

2 93. The affirmative acts of Defendants, including acts in furtherance of the
 3 conspiracy, were wrongfully concealed by Defendants and carried out in a manner
 4 that precluded detection, including public statements regarding competition by
 5 Defendants' top leadership. For example, Daimler's Dieter Zetsche claimed that
 6 Audi, BMW and Mercedes were at the forefront of the vehicle business because
 7 they were fiercely competing with each other – "[W]e are on our feet every day as
 8 neighbors. To this extent, competition is a bit sinister." Similarly, BMW's Harald
 9 Krüger said "This competition always spurs us on to top performances." VW boss
 10 Matthias Müller also praised the competition of the brands, and Audi CEO Rupert
 11 Stadler said that the competition among Defendants "gave us all a technological
 12 advantage."

13 94. Moreover, the Defendants' and their co-conspirators' conspiracy was
 14 inherently self-concealing. German Diesel Passenger Vehicles are subject to
 15 antitrust regulation, so Plaintiffs and the Class members reasonably believed that the
 16 industry was competitive. As alleged, throughout the course of the conspiracy, the
 17 Defendants secretly met no less than 1,000 times to coordinate and agree on a wide
 18 array of competitive issues. Such secret meetings also helped successfully conceal
 19 the decades-long conspiracy until July 21, 2017.

20 95. For these reasons, no statute of limitations bars Plaintiffs' and the
 21 Classes' claims.

22 VI. CLASS ALLEGATIONS

23 96. Plaintiffs bring this action both on behalf of themselves and all others
 24 similarly situated (the "Classes") pursuant to Federal Rules of Civil Procedure 23(a),
 25 23(b)(2) and (b)(3). The Classes are defined as follows:

26 ///

27 ///

28 ///

1 97. A “Nationwide Class” seeking equitable and injunctive relief defined as
2 follows:

3 All persons and entities who, during the Class Period,
4 purchased or leased, in the United States, a new German
5 Diesel Passenger Vehicle (as an indirect purchaser, and not
6 for resale), which was manufactured or sold by a
7 Defendant, any current or former subsidiary of a
8 Defendant, or any co-conspirator of the Defendants.
9 Excluded from the Class are the Defendants, their parent
10 companies, subsidiaries, and affiliates, any co-
11 conspirators, federal governmental entities and
12 instrumentalities of the federal government, states and their
13 subdivisions, agencies and instrumentalities, and persons
14 who purchased German Diesel Passenger Vehicle directly
15 or for resale.

16 98. The “State Law Classes” (including as further defined in the Claims
17 section below) seeking damages pursuant to state antitrust, unfair competition,
18 consumer fraud, consumer protection and unfair trade practice laws, as well as
19 common law unjust enrichment, defined as follows:

20 All persons and entities who, during the Class Period,
21 purchased or leased, in the below-identified States, a new
22 German Diesel Passenger Vehicle (as an indirect
23 purchaser, and not for resale), which was manufactured or
24 sold by a Defendant, any current or former subsidiary of a
25 Defendant, or any co-conspirator of the Defendants.
26 Excluded from the Class are the Defendants, their parent
27 companies, subsidiaries, and affiliates, any co-
28 conspirators, federal governmental entities and
instrumentalities of the federal government, states and
their subdivisions, agencies and instrumentalities, and
persons who purchased German Diesel Passenger Vehicle
directly or for resale.

99. Following further investigation as well as discovery in the case,
definitions of the Classes, including the Class Periods defined above, may be
modified by amendment, and Plaintiffs reserve the right to join additional class
representatives.

100. The Classes are individually so numerous that joinder of all members is
impracticable. Even though the exact number of members of the Class is unknown
at this time, based on the nature of the trade and commerce involved, Plaintiffs
reasonably believe that there are at least thousands of members in the Classes and

1 that their identities can be readily ascertained from records in the possession of
2 Defendants and/or third parties.

3 101. Class members are geographically dispersed throughout the United
4 States and its territories.

5 102. Plaintiffs' claims are typical of the claims of the other members of the
6 Classes because Plaintiffs and the Class members were similarly affected by the
7 Defendants' wrongful conduct in that they paid artificially inflated prices and
8 maintenance costs for German Diesel Passenger Vehicles purchased or leased from
9 the Defendants (or their subsidiaries or co-conspirators).

10 103. Plaintiffs and members of the Classes have all sustained damages
11 during the Class Period as a result of having purchased or leased one or more
12 German Diesel Passenger Vehicle indirectly (i.e., from a franchised dealership of
13 one of the Defendants) from Defendants (or their subsidiaries or co-conspirators) at
14 supracompetitive prices. Defendants and their co-conspirators' anticompetitive
15 conduct alleged herein, the impact of such conduct, and the relief sought are all
16 issues or questions that are common to Plaintiffs and the Classes.

17 104. Plaintiffs will fairly and adequately protect the interests of the Classes
18 and have retained counsel competent and experienced in class action, antitrust and
19 consumer protection litigation. Plaintiffs' interests are coincident with, and not
20 antagonistic to, the interests of the Classes.

21 105. Common questions of law and fact exist as to all members of the
22 Classes and predominate over any questions solely affecting individual Class
23 members.

24 106. The questions of law and fact common to the Class include, but are not
25 limited to:

- 26 i. Whether Defendants engaged in a contract, combination, or
27 conspiracy to raise, fix, maintain, and/or stabilize prices of
28 German Diesel Passenger Vehicles sold in the United States;

- 1 ii. The identity of the participants of the alleged conspiracy;
- 2 iii. The duration of the alleged conspiracy, and the acts carried out
- 3 by Defendants and their co-conspirators in furtherance of the
- 4 conspiracy;
- 5 iv. Whether Defendants' conduct caused German Diesel Passenger
- 6 Vehicles to be sold in the United States at artificially high prices,
- 7 including additional maintenance costs;
- 8 v. Whether the alleged conspiracy violated the Sherman Act;
- 9 vi. Whether the alleged conspiracy violated state laws, including
- 10 antitrust, unfair competition, consumer protection and unfair
- 11 trade practice laws;
- 12 vii. Whether Plaintiffs and other members of the Class are entitled to
- 13 injunctive relief and, if so, the nature and extent of such relief;
- 14 viii. Whether Plaintiffs and other members of the Classes were
- 15 injured by Defendants' conduct, and, if so, the appropriate class-
- 16 wide measure of damages for Class members; and,
- 17 ix. Whether the Defendants unjustly enriched themselves to the
- 18 detriment of the Plaintiffs and Class members, entitling Plaintiffs
- 19 and the Class members to disgorgement.

20 107. A class action is superior to other available methods for the fair and

21 efficient adjudication of this controversy because joinder of all members of the

22 Classes is impracticable.

23 108. The prosecution of separate actions by individual members of the

24 Classes would impose heavy burdens upon the courts and the parties, and would

25 create a risk of inconsistent or varying adjudications of the questions of law and fact

26 common to the Class. A class action would achieve substantial economies of time,

27 effort, and expense, and would assure uniformity of decision as to persons similarly

28 situated without sacrificing procedural fairness. There will be no material difficulty

1 in the management of this action as a class action on behalf of the Class. Although
 2 the laws of different states are implicated in this Complaint, these laws are
 3 substantially similar to one another and can be grouped together in manageable
 4 categories.

5 **VII. CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF** 7 **Violation of Section 1 of the Sherman Act** 8 **(Nationwide Class)**

9 109. Plaintiffs incorporate and reallege, as though fully set forth herein, each
 10 and every allegation set forth in the preceding paragraphs of this Complaint.

11 110. During the Class Period, Defendants and their co-conspirators entered
 12 into a continuing agreement, combination and/or conspiracy in restraint of trade to
 13 artificially raise, fix, maintain, or stabilize prices for German Diesel Passenger
 14 Vehicles sold in the United States, in violation of Section 1 of the Sherman Act,
 15 15 U.S.C. § 1.

16 111. The contract, combination or conspiracy resulted in an agreement,
 17 understanding or concerted action between and among the Defendants and their co-
 18 conspirators in furtherance of which the Defendants and their co-conspirators fixed,
 19 raised, maintained, and/or stabilized prices for German Diesel Passenger Vehicles
 20 sold in the United States. Such contract, combination, or conspiracy constitutes a
 21 *per se* violation of the federal antitrust laws.

22 112. The acts done by the Defendants as part of, and in furtherance of, the
 23 contract, combination, or conspiracy were authorized, ordered, or done by their
 24 officers, agents, employees, or representatives during or in connection with the
 25 performance of their work and/or duties.

26 113. The Defendants' anticompetitive acts were intentionally directed at the
 27 United States market for diesel passenger vehicles, and had a direct, substantial and
 28 foreseeable effect on interstate commerce by artificially raising prices of such
 vehicles sold in the United States.

1 114. Defendants succeeded in fixing, raising, and/or stabilizing the prices of
2 German Diesel Passenger Vehicles sold in the United States during the Class Period.

3 115. For purposes of formulating and effectuating their conspiracy,
4 Defendants and their co-conspirators did those things they conspired to do,
5 including but not limited to the acts, practices and course of conduct set forth herein.

6 116. Defendants' conspiracy had the following effects, among others:

7 i. Price competition in the United States market for diesel
8 passenger vehicles has been restrained, suppressed, and/or
9 eliminated; and,

10 ii. Prices in the United States for German Diesel Passenger
11 Vehicles sold by Defendants and their coconspirators have been
12 fixed, raised, maintained, and/or stabilized at artificial
13 supracompetitive levels.

14 117. As a direct and proximate result of Defendants' unlawful conduct,
15 Plaintiffs and the other members of the Classes have been injured (and will continue
16 to be injured) in their businesses or property in that they have paid more for German
17 Diesel Passenger Vehicles than they otherwise would have paid in a competitive
18 market and incurred increased maintenance costs.

19 118. Plaintiffs and members of the Nationwide Class are entitled to an
20 injunction against Defendants in order to stop the violations alleged herein.

21 **SECOND CLAIM FOR RELIEF**
22 **Violation of State Antitrust and Unfair Competition Laws**
(State Law Classes)

23 119. Plaintiffs incorporate and reallege, as though fully set forth herein, each
24 and every allegation set forth in the preceding paragraphs of this Complaint.

25 120. During the Class Period, Defendants and their co-conspirators entered
26 into a continuing agreement, combination or conspiracy in restraint of trade to
27 artificially raise, fix, maintain, and/or stabilize prices for German Diesel Passenger
28 Vehicles sold in the United States, in violation of the state antitrust and unfair

1 competition laws set forth below.

2 121. The contract, combination or conspiracy resulted in an agreement,
3 understanding or concerted action between and among the Defendants and their co-
4 conspirators in furtherance of which the Defendants and their co-conspirators fixed,
5 raised, maintained, and/or stabilized prices for German Diesel Passenger Vehicles
6 sold in the United States, including the States or territories set forth below. Such
7 contract, combination, or conspiracy was knowing and willful and constitute
8 violations of the state antitrust and unfair competition laws set forth below.

9 122. Defendants succeeded in fixing, raising, maintaining and/or stabilizing
10 the prices of German Diesel Passenger Vehicles sold in the United States during the
11 Class Period.

12 123. For purposes of formulating and effectuating their conspiracy,
13 Defendants and their co-conspirators did those things they conspired to do,
14 including but not limited to the acts, practices and course of conduct set forth herein.

15 124. As a direct and proximate result of Defendants' unlawful conduct,
16 Plaintiffs and the other members of the Classes have been injured (and will continue
17 to be injured) in their businesses or property in that they have paid more for German
18 Diesel Passenger Vehicles than they otherwise would have paid in a competitive
19 market and incurred increased maintenance costs.

20 125. As a result of Defendants' unlawful conduct, Plaintiffs and the other
21 members of the Classes seek relief as permitted, including injunctive relief, damages
22 and costs of suit, including reasonable attorneys' fees.

23 **A. CALIFORNIA**

24 126. By reason of the foregoing, and the fact that competition for German
25 Diesel Passenger Vehicles was restrained, suppressed, and eliminated throughout
26 California, Defendants' conduct of entering into agreements in restraint of trade is in
27 violation of California Bus. & Prof. Code §§ 16700, *et seq.* and California's Unfair
28 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

1 **B. ILLINOIS**

2 127. By reason of the foregoing, and the fact that competition for German
3 Diesel Passenger Vehicles was restrained, suppressed, and eliminated throughout
4 Illinois, Defendants’ conduct of entering into agreements in restraint of trade is in
5 violation of 740 Ill. Comp. Stat. Ann. 10/1, *et seq.*

6 **THIRD CLAIM FOR RELIEF**
7 **Violation of State Consumer Protection and Unfair Trade Practice Laws**
8 **(State Law Classes)**

9 128. Plaintiffs incorporate and reallege, as though fully set forth herein, each
10 and every allegation set forth in the preceding paragraphs of this Complaint.

11 129. During the Class Period, Defendants engaged in unfair competition or
12 unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the
13 state consumer protection and unfair trade practices set forth below.

14 130. The affirmative acts of Defendants, including acts in furtherance of the
15 conspiracy, were wrongfully and fraudulently concealed by Defendants and carried
16 out in a manner that precluded detection, including public statements regarding
17 competition by Defendants’ top leadership.

18 131. As a direct and proximate result of Defendants’ unlawful conduct,
19 Plaintiffs and the other members of the Classes have been injured (and will continue
20 to be injured) in their businesses or property.

21 132. As a result of Defendants’ unlawful conduct, Plaintiffs and the other
22 members of the Classes seek relief as permitted, including injunctive relief, damages
23 and costs of suit, including reasonable attorneys’ fees.

24 **A. CALIFORNIA**

25 133. By reason of the foregoing, Defendants have engaged in unfair
26 competition or unfair or deceptive acts or practices in violation of California’s
27 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

28 ///

///

**FOURTH CLAIM FOR RELIEF
Unjust Enrichment and Disgorgement
(State Law Classes)**

1
2
3 134. Plaintiffs incorporate and reallege, as though fully set forth herein, each
4 and every allegation set forth in the preceding paragraphs of this Complaint.

5 135. During the Class Period, the Defendants have been unjustly enriched
6 through overpayments by Plaintiffs and other members of the Classes through the
7 resulting profits enjoyed by Defendants as a direct result of such overpayments.

8 136. Plaintiffs' and other members of the Classes' detriment and the
9 Defendants enrichment were related to and flowed from the conduct challenged in
10 this Complaint.

11 137. The Defendants have been enriched and Plaintiffs and other members
12 of the Classes have been impoverished as a result of the Defendants' enrichment.

13 138. The Defendants financially benefited, appreciated the benefit, and
14 accepted the benefit conveyed upon them by Plaintiffs and other members of the
15 Classes as a result of the conduct alleged herein.

16 139. The Defendants' enrichment was unjustified.

17 140. The Defendants' retention of the benefit violates fundamental
18 principles of justice, equity, and good conscience.

19 141. Under common law principles of unjust enrichment, and under the
20 circumstances alleged herein, it would be inequitable for the Defendants not to
21 compensate Plaintiffs and other members of the Classes for the benefit conferred on
22 the Defendants and they should not be permitted to retain the benefits conferred via
23 overpayments by Plaintiffs and other members of the Classes.

24 142. Pursuit of administrative remedies against the Defendants under the
25 circumstances alleged herein would have been futile.

26 143. As applicable and only as necessary, Plaintiffs and other members of
27 the Classes allege in the alternative that there is no adequate remedy at law.

28 144. Plaintiffs and other members of the Classes, therefore, seek

1 disgorgement of all profits resulting from such overpayments, and establishment of
2 a constructive trust from which Plaintiffs and other members of the Classes may
3 seek restitution, under the laws of California and Illinois.

4 **IIX. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request that the Court:

6 A. Determine that the claims alleged herein under the Sherman Act, state
7 antitrust, unfair competition, consumer protection and/or unfair trade practice laws
8 may be maintained as a Class action under Rule 23(a), (b)(2), and (b)(3) of the
9 Federal Rules of Civil Procedure, and Order that reasonable notice of this action be
10 given to members of the Classes;

11 B. Appoint Plaintiffs as Class Representatives for the Classes, and
12 Counsel of Record as Lead Class counsel;

13 C. Adjudge and decree that the unlawful conduct, contract, conspiracy, or
14 combination alleged herein is:

- 15 i. An unreasonable restraint of trade or commerce in violation of
16 Section 1 of the Sherman Act;
17 ii. A per se violation of Section 1 of the Sherman Act; and,
18 iii. An unlawful combination, trust, agreement, understanding and/or
19 concert of action in violation of the state antitrust and unfair
20 competition laws set forth herein, as well as in violation of the
21 state and consumer protection and unfair trade practice laws set
22 forth herein.

23 D. Award damages to Plaintiffs and the members of the State Law
24 Classes, to the maximum extent allowed, and enter a joint and several judgment in
25 favor of Plaintiffs and the members of such classes against Defendants, in an
26 amount to be trebled to the extent allowed;

27 E. Award restitution and/or disgorgement of profits unlawfully gained to
28 Plaintiffs and members of the State Law Classes, to the maximum extent allowed;

PEARSON, SIMON & WARSHAW, LLP
44 MONTGOMERY STREET, SUITE 2450
SAN FRANCISCO, CALIFORNIA 94104

1 F. Permanently enjoin and restrain Defendants, their affiliates, successors,
2 transferees, assignees and other officers, directors, partners, agents and employees
3 thereof, and all other persons acting or claiming to act on their behalf or in concert
4 with them, from in any manner continuing, maintaining or renewing the conduct,
5 contract, conspiracy, or combination alleged herein, or from entering into any other
6 contract, conspiracy, or combination having a similar purpose or effect, and from
7 adopting or following any practice, plan, program, or device having a similar
8 purpose or effect;

9 G. Award Plaintiffs and the members of the Classes pre- and post-
10 judgment interest as provided by law, and that such interest be awarded at the
11 highest legal rate from and after the date of service of this Complaint;

12 H. Award Plaintiffs and the members of the Classes their costs of suit,
13 including reasonable attorneys’ fees, as provided by law; and,

14 I. Award Plaintiffs and members of the Classes such other and further
15 relief as the case may require and the Court may deem just and proper.

16 **IX. DEMAND FOR JURY TRIAL**

17 Plaintiffs hereby demand a trial by jury, including pursuant to Federal Rule of
18 Civil Procedure 38(b), on all issues where a right to such trial exists.

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

PEARSON, SIMON & WARSHAW, LLP
44 MONTGOMERY STREET, SUITE 2450
SAN FRANCISCO, CALIFORNIA 94104

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ALLAN STEYER (CA SBN 100318)
asteyer@steyerlaw.com

Jill M. Manning (CA SBN 178849)
jmanning@steyerlaw.com

D. Scott Macrae (Bar No. 104663)
smacrae@steyerlaw.com

**STEYER LOWENTHAL BOODROOKAS
ALVAREZ & SMITH LLP**

One California Street, Third Floor
San Francisco, CA 94111
Telephone: (415) 421-3400
Facsimile: (415) 421-2234

TODD M. SCHNEIDER (CA SBN 158253)
tschneider@schneiderwallace.com

KYLE G. BATES (CA SBN 299114)
kbates@schneiderwallace.com

**SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP**

2000 Powell Street, Suite 1400
Emeryville, CA 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

*Attorneys for Plaintiffs Glen Reder and Lonny
Gold*