UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSEPH OLMANN, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

Mercedes-Benz USA, LLC; Mercedes-Benz Aktiengesellschaft; and Mercedes-Benz Group Aktiengesellschaft,

Defendants.

Civil Action No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Joseph Olmann ("Plaintiff" or "Olmann") brings this action against Mercedes-Benz USA, LLC ("MBUSA"), Mercedes-Benz Aktiengesellschaft ("MBAG"), and Mercedes-Benz Group Aktiengesellschaft ("MBG") (together, "Mercedes" or "Defendants"). Plaintiff brings this action individually and on behalf of a putative Class consisting of all persons in the United States and its territories who purchased or leased any ML-Class, GL-Class, and R-Class vehicles built between 2004 and 2015 (collectively, "Class Vehicles").

2. Properly functioning brakes are a fundamental component of any vehicle and are essential to the safety of the vehicle's driver, passengers, nearby vehicles, pedestrians, and other bystanders. Drivers reasonably expect that pressing on a vehicle's brakes will cause the vehicle to slow down until the vehicle comes to a stop. Notwithstanding, according to counsel's analysis of publicly available materials, including but not limited to statements released by Defendants and National Highway Traffic Safety Administration ("NHTSA") materials, the braking systems in all Class Vehicles suffer from defects that may lead to partial or total loss of breaking abilities.

3. Based on information and belief, due to defect in material and/or workmanship , moisture may accumulate and cause corrosion in the brake booster housing unit, which can result in reduced brake performance or brake failure (the "Brake Defect" or "Defect"). According to Mercedes, "the function of the brake booster could be affected by advanced corrosion in the joint area of the housing." This braking system defect could require an increase in the brake pedal force needed to decelerate the vehicle and/or to a potentially increased stopping distance, Mercedes explained. Reduced brake performance or brake failure can increase the risk of an accident.

4. A vehicle should function in a manner that the driver expects, *i.e*. it should decelerate and stop at appropriate times while the driver operates the vehicle. In practice, however, Defendants' braking system prevents the Class Vehicles from decelerating and stopping as drivers anticipate, causing numerous safety concerns.

5. The Defect causes unsafe conditions, including, but not limited to, delayed deceleration and inability to brake, which present safety hazards because they severely affect the driver's ability to control the car's speed, decelerate, and stop. As examples, these conditions may make it difficult to safely change lanes, make turns, merge into traffic, decelerate and stop at stop lights/signs, and decelerate onto highways/freeways.

6. On information and belief, Defendants' corporate officers, directors, or managers had exclusive knowledge about the Defect and the safety hazard it poses, and failed to disclose it to Plaintiff and Class Members, including at the time of sale, lease, and repair.

7. On information and belief, the Brake Defect is uniform and common to all Class Vehicles.

8. Because Mercedes did not notify Class Members that the braking system is defective, Plaintiff and Class Members purchased vehicles that are subjected to dangerous driving

conditions that often occur without warning, and, because Mercedes has not subsequently notified Plaintiff and Class Members of the Defect or corrected the Defect, Plaintiff, Class Members, and members of the general public continue to be subjected to the dangerous conditions imposed by the Defect.

9. The alleged Defect was included in each vehicle Class Vehicle and was present in each Class Vehicle at the time of sale.

10. Defendants had actual knowledge of the Brake Defect since at least June 15, 2009, when Mercedes issued a Technical Service Bulletin ("TSB") to its network of authorized dealers that warned of the danger corrosion may have on the brake components in Mercedes vehicles. Defendants knew or should have known of the Defect much earlier due to pre-production testing, failure mode analysis, and reports to authorized dealers, repair centers, and complaints to the NHTSA. Notwithstanding, Defendants omitted material information about the Brake Defect and did not disclose these problems to Plaintiff and the Class, so that they could continue to profit from the sale of the Class Vehicles. Despite having actual knowledge of the Brake Defect since at least June 15, 2009, Mercedes did not conduct a safety recall of the Class Vehicles until May of 2022. Moreover, to date, Defendants have not provided direct notice regarding the Brake Defect to consumers.

11. Mercedes knew about Brake Defect present in every Class Vehicle, along with the attendant dangerous safety problems, and concealed this information from Plaintiff and Class Members at the time of sale, lease, repair, and thereafter.

12. In its May 11, 2022 recall (NHTSA Recall No. 22V-315) (the "Recall"), Defendants noted the severity of the Brake Defect by warning owners "not to drive their vehicles until the remedy has been performed." Defendants further advise that "customers to stop driving

the vehicle until the first inspection is performed."

13. Defendants' delayed Recall is insufficient to remedy the harm caused to Plaintiff and Class Members, who overpaid for their Class Vehicles and are deprived of the use of their Class Vehicles.

14. Furthermore, Defendants' inspection process is not presently available and, once an inspection process is available, Class Members will have to schedule an inspection appointment at an authorized dealer. Then, if upon inspection the authorized dealer discovers advanced corrosion, the Class Member is advised not to use the Class Vehicle until the brake booster housing is replaced – a process that could take two years.

15. These additional delays caused, and will continue to cause, loss of use and out-of-pocket expenses to Plaintiff and Class Members, many of which have paid and are continuing to pay for a loaner vehicle.

16. Despite Defendants' existing actual knowledge of the Brake Defect, Defendants omitted information regarding the Defect from their advertising, promotion, or other contacts with Plaintiff and Class members prior to purchase and/or lease. By failing to inform Class Members of the Brake Defect and by failing to correct the Defect, and delaying the Recall, Defendants have prioritized profits over the safety of Plaintiff, the Class, and the general public, who are all endangered by the Brake Defect.

17. Plaintiff and the Class Members all purchased vehicles of a lesser quality than was represented. The Class Vehicles do not meet ordinary and reasonable consumer expectations regarding the quality, durability, or value, and are unfit for their intended purpose at the most essential level.

18. If Plaintiff and Class Members had known about the Defect at the time of sale or

lease, Plaintiff and Class Members would not have purchased or leased the Class Vehicles or would have paid less for them.

19. As a result of their reliance on Defendants' omissions, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles, were deprived of the benefit of their bargains, must pay out-of-pocket for repairs and loaner vehicles, and suffer from the diminished value of their vehicles. Additionally, as a result of the Brake Defect, Plaintiff and Class Members were harmed and suffered actual damages in that the Class Vehicles' brakes are substantially likely to fail before their expected useful life has run.

THE PARTIES

Plaintiff Joseph Olmann

20. Plaintiff Joseph Olmann is a citizen of New York and resides in Brooklyn, New York.

21. On or around March 30, 2021, Olmann purchased a 2008 Mercedes GL 450 in New York. Olmann's vehicle was equipped with the defective braking system.

22. On or around April 12, 2022, Olmann was involved in an accident while driving his 2008 Mercedes GL 450. Specifically, Olmann recalls that his vehicle did not stop after encountering a rough patch on the road, causing him to collide with several parked cars and totaling his vehicle.

23. On or around April 29, 2022, Olmann purchased a 2011 ML 350 in New York.

24. Plaintiff did not know and had no way of knowing the Class Vehicles contained Brake Defects that could cause partial or complete loss of braking capability. Rather, before acquiring the Class Vehicles, Plaintiff viewed or heard commercials and reviews regarding the

safety and reliability of the Class Vehicles. Defendants concealed the existence of the Brake Defect from Plaintiff, the Class, and the public. Plaintiff and the other members of the Class would not have purchased the Class Vehicles, or would have paid less for them, if Defendants did not conceal material information about the existence of the Brake Defect. As a result of the concealed Brake Defect, the value of Plaintiff and the other members of the Class's Class Vehicles has diminished.

25. Plaintiff and each other Class Member's ascertainable losses include, but are not limited to, out-of-pocket losses by overpaying for the vehicles at the time of purchase, decreased performance of the vehicles and diminished value of the vehicles. Accordingly, Plaintiff brings claims individually and as a representative of the Class.

Defendants

26. Defendant Mercedes-Benz USA, LLC ("MBUSA") is a limited liability company organized and in existence under the laws of the State of Delaware and registered to do business in the State of New York and throughout the United States. MBUSA is a wholly owned subsidiary of MBAG. MBUSA acted as an authorized agent, representative, servant, employee and/or alter ego of MBG and MBAG while engaging in business activities in furtherance of the interests of MBAG and MBG, including the advertising, marketing and sale of Mercedes automobiles nationwide. Until the 2019 spinoff of MBAG, MBUSA operated under MBG f/k/a Daimler AG.

27. Defendant Mercedes-Benz Group Aktiengesellschaft ("MBG") is a German Aktiengesellschaft, *i.e.*, a publicly traded corporation, with its principal place of business in Stuttgart, Germany. In February 2022, the company was renamed from "Daimler AG" to "Mercedes-Benz Group AG." MBG is one of the largest automobile manufacturers in the world. MGB's business entails designing, developing, testing, manufacturing, and selling automobiles.

28. Defendant Mercedes-Benz Aktiengesellschaft ("MBAG") is a German Aktiengesellschaft with its principal place of business in Stuttgart, Germany. MBAG is a subsidiary of MBG that manages the Mercedes-Benz car and van business worldwide. During the manufacturing and sales of the Class Vehicles in the 2006-2012 period, MBG and MBAG operated as one entity under the name "Daimler AG."

JURISDICTION

29. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more Class Members; (ii) there is an aggregate amount in controversy exceeding $5,000,000, exclusive of interest and costs; and (iii) there is diversity because Plaintiff and Defendants are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

30. This Court also has personal jurisdiction over Defendants under 18 U.S.C. § 1965(d) because Defendants are found, have agents, and/or transact substantial business in this District.

VENUE

31. Venue properly lies in this District pursuant to 28 U.S.C. § 1391 because this is a District in which a substantial part of the events or omissions giving rise to the claims occurred. Defendants have marketed, advertised, and/or sold the Class Vehicles within this District, including through numerous Mercedes dealers doing business in the District. Defendants' actions have caused harm to thousands of members of the Class residing in New York, including Plaintiff.

FACTUAL ALLEGATIONS

32. Defendants, directly and/or through their agents, designed, manufactured, distributed, sold, leased, and warranted thousands of Class Vehicles in a uniform manner

throughout the United States. Defendants, directly and/or through their agents, developed and disseminated uniform promotional materials (such as owner's manuals and warranties) regarding the Class Vehicles, and all materials that were available at the point of sale and/or lease. Defendants, directly and/or through their agents, designed, manufactured, and/or installed uniform braking systems with the Defect in hundreds of thousands of the Class Vehicles distributed throughout the United States.

33. Mercedes marketed the Class Vehicles as having the premier quality, long-lasting, and maintaining resale value superior to other vehicles. Through its slogan, Mercedes promises to deliver "the best or nothing." Similarly, Mercedes markets its vehicles as "state-of-the-art," "luxury," "fine craftsmanship," "the most advanced vehicles on the road," and "enduring quality."

34. In stark contrast to its representations, Mercedes equipped Class Vehicles are with defective braking systems that have caused Mercedes to issue a stop drive order, may fail and result in partial or total loss of braking capability, creating safety risks with potentially deadly consequences for Plaintiff, Class Members, and the public. Defendants knew or should have known about the Brake Defect but delayed its Recall and failed to rectify the Defect.

35. Defendants knew or should have known of design defects in Class Vehicles if Defendants had adequately tested the braking systems in the Class Vehicles. Knowledge and information regarding the braking systems and the Defect were exclusively in Defendants' and their agents' possession.

36. Defendants possessed or should have possessed actual knowledge regarding the Brake Defect from a variety of sources.

37. First, Defendants gained and possessed actual knowledge regarding the Defect through internal testing. Defendants and/or its agents conduct internal pre-production testing and

abide by quality control mandates. As such, Defendants perform, *inter alia*, crash tests, brake systems tests and validation, and extreme weather testing to ensure that the brakes in their vehicles, including the Class Vehicles, meet regulatory requirements.

38. Second, Defendants gained and possessed actual knowledge regarding the Defect through customer complaints, data, and claims. Defendants' dealerships report customer complaints, data, and warranty claims to Defendants, which include complaints and claims concerning the Defect. Defendants have access to and monitor internal databases containing customer complaints and warranty claims, which allow for Defendants to identify and address design and engineering problems. Defendants likewise have access to and monitor the NHTSA customer complaint database, which includes complaints regarding the Brake Defect.

39. Thus, Defendants were aware, or should have been aware, of the Brake Defect in the Class Vehicles.

40. Defendants knew, or should have known, that the Brake Defect was material to owners of the Class Vehicles because safety and reliability are reasonable expectations among purchasers and lessees of Class Vehicles. Defendants knew, or should have known, that the Brake Defect was not known or reasonably discoverable by Plaintiff and the Class before they purchased or leased Class Vehicles. The information about the Defect in Defendants' possession and available to Defendants was technical, proprietary, and not known by the ordinary consumer or the public, including Plaintiff and members of the Class. Defendants knew, or should have known, that Plaintiff and the Class did not possess adequate technical expertise to recognize the Brake Defect.

41. Defendants knew, or should have known, that the Brake Defect may cause partial or complete loss of braking capability in the Class Vehicles. Defendants knew, or should have

known, that such malfunction of braking system poses a safety hazard to Plaintiff, the Class, passengers in Class Vehicles, and the public.

42. Despite this knowledge, Defendants continued to sell Class Vehicles with the Brake Defect and allowed the Class Vehicles to be driven on the road, thereby endangering Plaintiff, the Class, and the public.

43. Defendants fraudulently, intentionally, negligently, and/or recklessly concealed the Brake Defect and its attendant safety risks from Plaintiff and Class Members. Defendants affirmatively concealed material facts concerning the Brake Defect to continue selling and leasing their vehicles, to avoid recalls that would negatively impact Mercedes' reputation and entail significant costs, and to maintain profits.

44. On May 9, 2022, Defendant MBUSA issued a safety recall to the NHTSA (NHTSA Recall No.: 22V-315) affecting certain 2006-2012 ML-Class, GL-Class, and R-Class vehicles. The recall notice provided as follows: "Moisture may wick under a rubber sleeve that is installed around the brake booster housing for aesthetic reasons. This might result in corrosion in the joint area of the brake booster housing." It further explained resulting safety risks: "After extended time in the field and in conjunction with significant water exposure, this corrosion might lead to a leakage of the brake booster. In this case, the brake force support might be reduced, leading to an increase in the brake pedal forces required to decelerate the vehicle and/or to potentially increased stopping distance. Additionally, in rare cases of very severe corrosion, it might be possible for a particularly strong or hard braking maneuver to cause mechanical damage in the brake booster, whereby the connection between brake pedal and brake system would fail. In such a very rare case, it would not be possible to decelerate the vehicle via the service brake. Thus, the risk of a crash or injury would be increased. The function of the foot parking brake is not affected by this issue."

45. Given the nature of the risks caused by the Defect, Mercedes advised Plaintiff and Class Members "not to drive their vehicles until the remedy has been performed."

46. Presently, Mercedes has yet to directly inform Plaintiff and the Class of the Defect, and owner notifications letters have not yet been sent out.

47. Despite advising that Plaintiff and the Class stop driving the Class Vehicles until the Defect is repaired, Defendants refuse to even begin scheduling inspections until the owner notifications letters are delivered. Moreover, according to Mercedes, should an eventual inspection reveal corrosion requiring repair, repairs may take two years to perform.

48. Thus, Plaintiff and the Class have no choice but to drive a defective and inherently unsafe vehicle or pay significant out-of-pocket expenses for a loaner vehicle until Defendants conduct inspections and, if necessary, repair the vehicles.

49. The alleged Defect was inherent in each Class Vehicle and was present in each Class Vehicle at the time of sale or lease.

50. The existence of the Brake Defect is a material fact that a reasonable consumer would consider when deciding whether to purchase or lease a Mercedes vehicle. Had Plaintiff and other Class Members known that the Class Vehicles were equipped with defective braking systems, they would not have purchased or leased the Class Vehicles or would have paid less for them.

51. Reasonable consumers, like Plaintiff, reasonably expect that a vehicle's braking system is safe, will function in a manner that will not pose a safety hazard, and is free from defects. Plaintiff and Class Members further reasonably expect that Mercedes will not sell or lease vehicles with known safety defects, such as the Brake Defect, and will disclose any such defects to its consumers when it learns of them. They did not expect Mercedes to fail to disclose the Brake

Defect to them until they were finally forced to issue a recall.

52. Because of Defendants' asymmetrical knowledge regarding the Defect, the bargaining position of Defendants for the sale or lease of Class Vehicles was disproportionate and superior to that of individual vehicle purchasers or lessees, including Plaintiff and members of the Class. Defendants' conduct renders the vehicle contract so one-sided as to be unconscionable. Defendants are engaged in a continuing fraud concerning the true underlying cause of Class Vehicle failures.

53. As a proximate and direct result of Defendants' unfair and deceptive trade practices, Plaintiff and the Class sustained ascertainable losses when purchasing or leasing Class Vehicles.

TOLLING OF THE STATUTE OF LIMITATIONS AND ESTOPPEL

54. Any applicable statute of limitations has been tolled by Defendants' knowing and active concealment of the Brake Defect and the misrepresentations and omissions alleged herein. Through no fault or lack of diligence, Plaintiff and the Class were deceived regarding the nature, condition, quality, reliability, functionality, and safety of the Class Vehicles and could not have reasonably discovered the Brake Defect or Defendants' deception with respect to the existence and extent of the Defect.

55. Plaintiff and Class Members did not discover and did not know of any facts that would have caused a reasonable person to suspect that Defendants were concealing a defect and/or that the Class Vehicles contained the Defect and corresponding safety risk. As alleged herein, the existence and the extend of the Defect was material to Plaintiff and members of the Class at all relevant times. Within the time period of any applicable statutes of limitations, Plaintiff and the Class could not have discovered through the exercise of reasonable diligence the existence and extent of the Defect or that Defendants were concealing the Defect.

56. At all times, Defendants are and were under a continuing duty to disclose to Plaintiff and the Class the true standard, quality, and grade of the Class Vehicles and to disclose the Brake Defect and corresponding safety risk.

57. Defendants knowingly, actively, and affirmatively concealed the facts alleged herein, including the existence and extent of the Brake Defect by various methods, including but not limited to denying the existence of the Defect in response to Plaintiff's and Class Members' complaints. Plaintiff and the Class reasonably relied on Defendants' knowing, active, and affirmative concealment.

58. For these reasons, all applicable statutes of limitation have been tolled based on the discovery rule and Defendants' fraudulent concealment, and Defendants are estopped from reply on any statutes of limitations in defense of this action.

CLASS ACTION ALLEGATIONS

59. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly situated as members of the proposed Class and Sub-Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

60. The Class and Sub-Class are defined as:

Class: All individuals residing in the United States of America, including its territories, who purchased or leased any Mercedes ML-Class, GL-Class, and R-Class vehicles built between 2004 and 2015.

New York Sub-Class: All members of the Class who purchased or leased their vehicles in the State of New York.

61. Excluded from the Class and the Sub-Class are: (1) Defendants, any entity or

division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-Class should be expanded or otherwise modified.

62. There is a well-defined community of interest in the litigation and the Class and Sub-Class are readily ascertainable.

63. **Numerosity**: Although the exact number of prospective Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of prospective Class Members' claims in a single action will provide substantial benefits to all parties and to the Court. The prospective Class Members are readily identifiable from information and records in Defendants' possession, custody, or control, as well as from records kept by the departments of motor vehicles of the various states.

64. **Typicality**: Plaintiff's claims are typical of the claims of the all prospective Class Members in that Plaintiff and the prospective Class Members purchased or leased a Class Vehicle designed, manufactured, and distributed by Mercedes and equipped with the Brake Defect. Plaintiff and all Class Members have been damaged by Defendants' misconduct in that they would not have purchased their Class Vehicles, or would have paid less for the vehicles, had Defendants disclosed its knowledge of the Brake Defect and because the Class Vehicles' brake system components are substantially certain to fail before their expected useful life has run and Class

Members have incurred or will incur the cost of repairing or replacing the defective braking system. Furthermore, the factual bases of Mercedes' misconduct are common to all prospective Class Members and represent a common thread resulting in injury to all prospective Class Members.

65. **Commonality**: There are numerous questions of law and fact common to Plaintiff and Class Members that predominate over any question affecting individual prospective Class Members. These common legal and factual issues include the following:

a) Whether the braking system in the Class Vehicles is defective;

b) Whether the Brake Defect constitutes an unreasonable safety risk;

c) Whether and when Defendants knew about the Brake Defect;

d) Whether the Brake Defect constitutes a material fact;

e) Whether Defendants had a duty to disclose its knowledge of the Brake Defect to Plaintiff and Class Members;

f) Whether Plaintiff and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;

g) Whether Defendants knew or reasonably should have known of the Brake Defect before selling and leasing Class Vehicles to Plaintiff and Class Members;

h) Whether Defendants should be declared financially responsible for notifying all prospective Class Members of the Brake Defect and for expenses of repairing the Brake Defect; and

i) Whether Defendants are obligated to inform Plaintiff and Class Members of their right to seek reimbursement for having paid to diagnose, repair, or replace the defective braking system.

66. **Adequate Representation**: Plaintiff will fairly and adequately protect prospective Class Members' interests. Plaintiff has retained attorneys experienced in prosecuting class actions, including consumer and product defect class actions, and Plaintiff intends to prosecute this action vigorously.

67. **Predominance and Superiority**: Plaintiff and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants and will promote consistency and efficiency of adjudication.

68. In the alternative, the Class may be certified because:

a) The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class Members, which would establish incompatible standards of conduct for Defendants;

b) The prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to them that would, as a practical matter, be

dispositive of the interests of other Class Members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

FIRST CAUSE OF ACTION
Breach of Warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2303 *et seq*.

69. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 68 of this Complaint.

70. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Nationwide Class, or in the alternative, on behalf of the individual New York Sub-Class.

71. The Class Vehicles are a "consumer product" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

72. Plaintiff and Class Members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

73. Defendants are each a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

74. Defendants' express warranty is a "written warranty" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6).

75. As part of these written warranties, Defendants warranted that the Class Vehicles were defect-free and/or would meet a specified level of performance over a specified period of time that formed the basis of a bargain between Defendants and Plaintiff and the Class.

76. Furthermore, Defendants impliedly warranted that the Class Vehicles were of merchantable quality and fit for their intended use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their braking systems that were manufactured, supplied, distributed, and/or sold by Mercedes were safe and reliable for providing transportation; and (ii) a warranty that the Class Vehicles and their braking systems would be fit for their intended use while the Class Vehicles were being operated.

77. Contrary to the applicable warranties, the Class Vehicles and their braking systems at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff and Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles suffer from Brake Defect, which renders the Class Vehicles unsafe and unable to provide reliable transportation.

78. Defendants' breach of express and implied warranties has deprived Plaintiff and Class Members of the benefit of their bargain.

79. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum or value of $25. In addition, the amount in controversy meets or exceeds the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

80. Plaintiff and the Class were not required to notify Defendants of their violations of the Magnuson-Moss Warranty Act and/or were excused from doing so because affording Mercedes a reasonable opportunity to cure its warranty breaches would have been futile. Defendants were also on notice of the Defect from the complaints and service requests it received from Class Members, from repairs and/or replacements of the braking systems or a component thereof, and through other internal sources.

81. Defendants have been afforded a reasonable opportunity to cure its warranty breaches, including when Plaintiff and Class Members brought their vehicles in for diagnoses and repair of the braking systems.

82. In addition, on or about July 8, 2022, Plaintiff gave notice to Defendants that he intended to pursue his Magnuson-Moss Warranty Act claims on behalf of a class of similarly situated consumers.

83. As a direct and proximate cause of Defendants' violations of the Magnuson-Moss Warranty Act, Plaintiff and Class Members sustained damages and other losses in an amount to be determined at trial. Defendants' conduct damaged Plaintiff and Class Members, who are entitled to recover actual damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, and/or other relief as appropriate.

SECOND CAUSE OF ACTION
Fraud by Omission or Fraudulent Concealment

84. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 83 of this Complaint.

85. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Nationwide Class under Michigan law, or in the alternative, under the laws of the states in which they made their purchases and/or leases, or in the alternative, on behalf of the individual New York Sub-Class.

86. Defendants intentionally and knowingly concealed, suppressed, and/or omitted material facts concerning the standard, quality or grade of the Class Vehicles, the presence of Brake Defect in the Class Vehicles, and the risk to the safety and reliability of the Class Vehicles due to the Brake Defect.

87. Defendants' intentional and knowing concealment, suppression, and/or omission

of these material facts was done with the intent that Plaintiff and Class Members would rely on Defendants' omissions.

88. As a direct result of Defendants' fraudulent conduct, Class Members have suffered actual damages.

89. Defendants knew (at the time of sale or lease and thereafter) that the Class Vehicles contained the Brake Defect, but Defendants concealed the Defect and never intended to repair or replace the Defect during the warranty periods. To date, Defendants have not provided Plaintiff or Class Members with a repair or remedy that will eliminate the Defect.

90. Defendants owed a duty to disclose the Defect and its corresponding safety hazard to Plaintiff and Class Members because Defendants possessed superior and exclusive knowledge regarding the Defect.

91. Further, Defendants had a duty to disclose any information relating to the safety, quality, functionality, and reliability of the Class Vehicles because it consistently marketed the Class Vehicles as safe and capable shifting appropriately in response to input from the driver via the accelerator pedal. Once Defendants made representations to the public about safety, quality, functionality, and reliability, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

92. Rather than disclose the Defect, Defendants intentionally and knowingly concealed, suppressed and/or omitted material facts concerning the Defect so that Defendants could sell additional Class Vehicles and avoid the cost of repair or replacement.

93. The Defect exposes drivers and occupants to an unreliable vehicle with a safety

defect. Plaintiff and Class Members had a reasonable expectation that the vehicles would not expose them and other vehicle occupants to such a safety hazard. No reasonable consumer expects a vehicle to be designed, manufactured, and assembled with a braking system subject to reduced brake performance or brake failure, like the braking systems in the Class Vehicles, or exhibit other dangerous conditions.

94. Plaintiff and Class Members would not have purchased or leased the Class Vehicles but for Defendants' omissions and concealment of material facts regarding the nature and quality of the Class Vehicles and existence of the Defect, or would have paid less for the Class Vehicles.

95. Defendants knew its concealment and suppression of material facts were false and misleading and knew the effect of concealing those material facts. Defendants knew their concealment and suppression of the Defect would enable it to sell more Class Vehicles and would discourage Plaintiff and Class Members from seeking replacement or repair of the Defect. Further, Defendants intended to induce Plaintiff and Class Members into purchasing or leasing the Class Vehicles and to discourage them from seeking replacement or repair of the Defect, in order to decrease costs and increase profits.

96. Defendants acted with malice, oppression, and fraud.

97. Plaintiff and Class Members reasonably relied upon Defendants' knowing concealment and omissions. As a direct and proximate result of Defendants' omissions and active concealment of material facts regarding the Defect and associated safety hazard, Plaintiff and Class Members have suffered actual damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
Unjust Enrichment

98. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 97 of this Complaint.

99. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Nationwide Class under the laws of the states in which they made their purchases and/or leases, or in the alternative, on behalf of the individual New York Sub-Class.

100. Plaintiff and Class Members conferred a benefit on Defendants by leasing or purchasing the Class Vehicles. Defendants were and should have been reasonably expected to provide Class Vehicles free from the Brake Defect and associated safety risks.

101. Defendants unjustly profited from the lease and sale of the Class Vehicles at inflated prices as a result of its omissions and concealment of the Defect in the Class Vehicles.

102. As a proximate result of Defendants' omissions and concealment of the Brake Defect in the Class Vehicles, and as a result of Defendants' ill-gotten gains, benefits, and profits, Defendants have been unjustly enriched at the expense of Plaintiff and Class Members. It would be inequitable for Defendants to retain its ill-gotten profits without paying the value thereof to Plaintiff and Class Members.

103. Plaintiff and Class Members are entitled to restitution of the amount of Defendants' ill-gotten gains, benefits, and profits, including interest, resulting from its unlawful, unjust and inequitable conduct.

104. Plaintiff and Class Members seek an order requiring Defendants to disgorge their gains and profits to Plaintiff and Class Members, together with interest, in a manner to be determined by the Court.

FOURTH CAUSE OF ACTION
Violation of New York General Business Law § 349

105. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 104 of this Complaint.

106. Plaintiff brings this cause of action against Defendants on behalf of himself and on

behalf of the New York Sub-Class.

107. The sale and distribution of the Class Vehicles in New York constitutes a consumer-oriented act and occurred in the conduct of trade or commerce and thereby is governed by the New York deceptive acts and practices statute, General Business Law § 349 ("GBL § 349").

108. Plaintiff and the members of the New York Sub-Class and Defendants are all "persons" under GBL § 349(h).

109. GBL § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." Defendants' conduct, as set forth herein, constitutes deceptive acts or practices under this section of New York law.

110. In violation of the GBL § 349, Defendants failed to disclose and actively concealed the Brake Defect in the Class Vehicles, by marketing them as safe, reliable, functional, and of high quality, and by presenting themselves as a reputable manufacturer that values safety, Defendants engaged in deceptive business practices in violation of GBL § 349. Defendants deliberately withheld the information about the propensity of the Brake Defect to cause reduced brake performance or brake failure and other issues as described herein. Further, Defendants knew, or should have known, that such problems could cause the Class Vehicles to become involved in collisions or other accidents, putting vehicle operators, passengers and other motorists at risk for injury. Defendants deliberately engaged in deceptive business practices prohibited by the GBL § 349 by concealing and failing to disclose this material information to ensure that consumers would purchase the Class Vehicles and spend money on useless remedies and repairs.

111. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risks posed by the Brake Defect. Defendants compounded the deception by repeatedly asserting that the Class Vehicles were safe, reliable, functional, and of high quality

despite containing the Brake Defect, and by claiming to be a reputable manufacturer that values safety.

112. Defendants' deceptive trade practices were likely intended to deceive a reasonable consumer. Plaintiff and members of the New York Sub-Class had no reasonable way to know that the Class Vehicles contained the Brake Defect, which were defective in materials, workmanship, design, and/or manufacture and posed a serious and significant safety risk. Defendants possessed superior knowledge as to the quality and characteristics of the Class Vehicles, including the Brake Defect and its associated safety risks, and any reasonable consumer would have relied on Defendants' misrepresentations and omissions, as Plaintiff and members of the New York Sub-Class did.

113. Defendants intentionally and knowingly misrepresented material facts and omitted material facts regarding the Class Vehicles and the Brake Defect present in them with an intent to mislead Plaintiff and members of the New York Sub-Class.

114. Defendants knew or should have known that its conduct violated the GBL § 349.

115. Defendants made material statements and/or omissions about the safety, reliability, and functionality of the Class Vehicles and/or the defective braking system installed in them that were either false or misleading. Defendants' misrepresentations, omissions, statements, and commentary have included selling and marketing Class Vehicles as safe, reliable, and functional, despite their knowing of the Brake Defect and its corresponding safety hazard.

116. To protect their profits, avoid remediation costs and public relation problems, and increase their profits by having consumers pay for any parts and repairs to remedy to the Brake Defect, Defendants concealed the defective nature and safety risk posed by the Class Vehicles and existing Brake Defect at the time of sale or lease. Defendants allowed unsuspecting new and used

car purchasers and lessees to continue to buy or lease the Class Vehicles and continue to drive them, despite the safety risk they pose.

117. Defendants owed Plaintiff and members of the New York Sub-Class a duty to disclose the true safety, reliability, or functionality of the Class Vehicles and the existence of the Brake Defect because Defendant:

a) Possessed exclusive knowledge of the Brake Defect and its associated safety hazard;

b) Intentionally concealed the foregoing from Plaintiff and members of the New York Sub-Class; and/or

c) Made incomplete representations about the safety and reliability of the foregoing generally, while purposefully withholding material facts from Plaintiff and members of the New York Sub-Class that contradicted these representations, *inter alia*, that the Brake Defect existed at the time of sale or lease which disrupts the proper performance of the braking system in the Class Vehicles.

118. Because Defendants and their authorized agents to perform repairs fraudulently concealed the Brake Defect in the Class Vehicles, by denying the existence of the Defect, and/or pretending to fix the symptoms of the Defect, and now that the Defect has been discovered, the value of the Class Vehicles has greatly diminished, and they are now worth significantly less than they otherwise would be. Further, Plaintiff and members of the New York Sub-Class were deprived of the benefit of the bargain they reached at the time of purchase or lease.

119. Defendants' failure to disclose and active concealment of the Defect in the Class Vehicles were material to Plaintiff and members of the New York Sub-Class. But for Defendants' actions, Plaintiff and members of the New York Sub-Class would not have purchased and/or leased

their Class Vehicles, or would have paid less for them.

120. Plaintiff and members of the New York Sub-Class suffered ascertainable losses caused by Defendants' misrepresentations and their failure to disclose material information. Had Plaintiff and members of the New York Sub-Class been aware of the Defect that existed in the Class Vehicles and Defendants' complete disregard for the safety of its consumers, Plaintiff and members of the New York Sub-Class would not have paid as much for their vehicles or would not have purchased or leased them at all. Plaintiff and members of the New York Sub-Class did not receive the benefit of their bargain as a result of Defendants' misconduct.

121. Plaintiff and members of the New York Sub-Class risk loss of use of their vehicles as a result of Defendants' acts and omissions in violation of GBL § 349, and these violations present a continuing risk to Plaintiff and members of the New York Sub-Class and the public in general.

122. As a result of the foregoing willful, knowing, and wrongful conduct of Defendants, Plaintiff and members of the New York Sub-Class have been damaged in an amount to be proven at trial, and seek all just and proper remedies, including but not limited to actual damages or $50, which is greater, treble damages up to $1,000, punitive damages to the extent available under law, reasonable attorneys' fees and costs, an order enjoining Defendants' deceptive conduct, and all other just and appropriate relief available under GBL § 349.

FIFTH CAUSE OF ACTION
Violation of New York General Business Law § 350

123. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 122 of this Complaint.

124. Plaintiff brings this cause of action against Defendants on behalf of himself and on behalf of the New York Sub-Class.

125. The New York General Business Law § 350 ("GBL § 350") makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce." *Id.* False advertising includes "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in the light of . . . representations [made] with respect to the commodity . . . ." GBL § 350-a.

126. Defendants were engaged in the "conduct of business, trade or commerce," within the meaning of GBL § 350.

127. Mercedes caused to be made or disseminated through New York, through advertising, marketing, and other publications, including through its agents who its authorized dealers, statements and omissions that were untrue or misleading, and that were known by Defendants, or that through the exercise of reasonable care should have been known by Defendants, to be untrue and misleading to Plaintiff and the members of the New York Sub-Class.

128. In violation of the GBL § 350, Defendants failed to disclose and actively concealed the Brake Defect in the Class Vehicles, by marketing them as safe, reliable, functional, and of high quality, and by presenting themselves as a reputable manufacturer that values safety, Defendants engaged in deceptive business practices in violation of GBL § 350. Defendants deliberately withheld the information about the propensity of the Brake Defect to cause reduced brake performance or brake failure and other issues as described herein. Further, Defendants knew, or should have known, that such problems could cause the Class Vehicles to become involved in collisions or other accidents, putting vehicle operators, passengers and other motorists at risk for injury. Defendants deliberately engaged in deceptive business practices prohibited by the GBL § 350 by concealing and failing to disclose this material information to ensure that consumers would

purchase the Class Vehicles and spend money on useless remedies and repairs.

129. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risks posed by the Brake Defect. Defendants compounded the deception by repeatedly asserting that the Class Vehicles were safe, reliable, functional, and of high quality despite containing the Brake Defect, and by claiming to be a reputable manufacturer that values safety.

130. Defendants' deceptive trade practices were likely intended to deceive a reasonable consumer. Plaintiff and members of the New York Sub-Class had no reasonable way to know that the Class Vehicles contained the Brake Defect, which were defective in materials, workmanship, design and/or manufacture and posed a serious and significant safety risk. Defendants possessed superior knowledge as to the quality and characteristics of the Class Vehicles, including the Brake Defect and its associated safety risks, and any reasonable consumer would have relied on Defendants' misrepresentations and omissions, as Plaintiff and members of the New York Sub-Class did.

131. Defendants intentionally and knowingly misrepresented material facts and omitted material facts regarding the Class Vehicles and the Brake Defect present in them with an intent to mislead Plaintiff and members of the New York Sub-Class.

132. Defendants knew or should have known that its conduct violated the GBL § 350.

133. Defendants made material statements and/or omissions about the safety, reliability, and functionality of the Class Vehicles and/or the defective braking system installed in them that were either false or misleading. Defendants' misrepresentations, omissions, statements, and commentary have included selling and marketing Class Vehicles as safe, reliable, and functional, despite their knowing of the Brake Defect and its corresponding safety hazard.

134. Mercedes' false advertising was likely to and did in fact deceive reasonable consumers, including Plaintiff and members of the New York Sub-Class, about the safety, reliability, functionality, and true characteristics of the Class Vehicles, the quality of the Mercedes brand and the Class Vehicles, and the true value of the Class Vehicles.

135. To protect their profits, avoid remediation costs and public relation problems, and increase their profits by having consumers pay for any parts and repairs to remedy to the Brake Defect, Defendants concealed the defective nature and safety risk posed by the Class Vehicles and existing Brake Defect at the time of sale or lease. Defendants allowed unsuspecting new and used car purchasers and lessees to continue to buy or lease the Class Vehicles and continue to drive them, despite the safety risk they pose.

136. Defendants' failure to disclose and active concealment of the Defect in the Class Vehicles were material to Plaintiff and members of the New York Sub-Class. But for Defendants' actions in violation of GBL § 350, Plaintiff and members of the New York Sub-Class would not have purchased and/or leased their Class Vehicles, or would have paid less for them.

137. Plaintiff and members of the New York Sub-Class risk loss of use of their vehicles as a result of Defendants' acts and omissions in violation of GBL § 350, and these violations present a continuing risk to Plaintiff and members of the New York Sub-Class and the public in general.

138. Plaintiff and members of the New York Sub-Class have suffered injury-in-fact and/or actual damages and ascertainable loss as a direct and proximate result of FCA's false advertising in violation of GBL § 350, including but not limited overpaying for the Class Vehicles, lost or diminished use, enjoyment and utility of such vehicles, and annoyance, aggravation and inconvenience resulting from Mercedes' violation of GBL § 350.

139. As a result of Defendants' foregoing willful, knowing, and wrongful conduct, Plaintiff and members of the New York Sub-Class seek monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial, and (b) statutory damages in the amount of $500 each for members of the New York Sub-Class. Because Defendants' conduct was committed willingly and knowingly, Plaintiff and the members of the New York Sub-Class are entitled to recover three times actual damages, up to $10,000.

SIXTH CAUSE OF ACTION
Breach of Implied Warranty of Merchantability

140. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 139 of this Complaint.

141. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Nationwide Class under the laws of the states in which they made their purchases and/or leases, or in the alternative, on behalf of the individual New York Sub-Class.

142. Defendants provided Plaintiff and Class Members with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles and their braking systems suffered from an inherent defect at the time of sale and thereafter.

143. Plaintiff and Class Members were not required to notify Mercedes of its breach of implied warranty and/or were excused from doing so because affording Mercedes a reasonable opportunity to cure its breach implied warranty would have been futile. Defendants were also on notice of the Defect from the complaints and service requests they received from Class Members, from repairs and/or replacements of the braking system or a component thereof, and through other

internal sources.

144. Defendants have been afforded a reasonable opportunity to cure its breach, including when Class Members brought their vehicles in for diagnoses and repair of the braking system.

145. In addition, on or about July 8, 2022, Plaintiff gave notice to Defendants that he intended to pursue his warranty claims on behalf of a class of similarly situated consumers.

146. Because Plaintiff purchased his vehicles from an authorized Mercedes dealer, they are in privity with Mercedes since (1) an agency relationship establishes privity for purposes of the breach of implied warranty claims and (2) privity is not required where plaintiffs are intended third-party beneficiaries of a defendant's implied warranties.

147. As a result of Defendants' breach of the applicable implied warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles.

148. Defendants' actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use.

SEVENTH CAUSE OF ACTION
Breach of Express Warranty

149. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 148 of this Complaint.

150. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Nationwide Class under the laws of the states in which they made their purchases and/or leases, or in the alternative, on behalf of the individual New York Sub-Class.

151. As a result of Defendants' breach of the applicable express warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value

of their Class Vehicles. Additionally, as a result of the Brake Defect, Plaintiff and members of the Class were harmed and suffered actual damages in that the Class Vehicles' braking systems are substantially certain to fail before their expected useful life has run.

152. Defendants provided all purchasers and lessees of the Class Vehicles with the express warranty described herein, which became a material part of the bargain.

153. Defendants manufactured and/or installed the braking system and its component parts in the Class Vehicles, and the braking system and its component parts are covered by the express warranty.

154. Plaintiff and members of the Class were not required to notify Mercedes of its breach of express warranty and/or were excused from doing so because affording Mercedes a reasonable opportunity to cure its breach of written warranty would have been futile. Defendants were also on notice of the Defect from the complaints and service requests it received from Class Members, from repairs and/or replacements of the braking systems or a component thereof, and through other internal sources.

155. Further, Defendants were notified of the Defect and has been afforded a reasonable opportunity to cure its breach, including when Plaintiff and members of the Class brought their vehicles in for diagnoses and repair of the braking systems.

156. As a direct and proximate cause of Defendants' breach, Plaintiff and members of the Class suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, Plaintiff and members of the Class either have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

157. Plaintiff and members of the Class are entitled to legal and equitable relief against Defendants, including actual damages, consequential damages, specific performance, attorneys'

fees, costs of suit, and other relief as appropriate.

EIGHTH CAUSE OF ACTION
Fraud or Fraudulent Concealment

158. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 157 of this Complaint.

159. Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Nationwide Class under the laws of the states in which they made their purchases and/or leases, or in the alternative, on behalf of the individual New York Sub-Class.

160. Defendants intentionally and knowingly concealed, suppressed and/or omitted material facts concerning the standard, quality, or grade of the Class Vehicles, the presence of Brake Defect installed in the Class Vehicles, and the risk to the safety and reliability of the Class Vehicles due to the Brake Defect.

161. Defendants' intentional and knowing concealment, suppression and/or omission of these material facts was done with the intent that Plaintiff and members of the Class would rely on Defendants' omissions.

162. As a direct result of Defendants' fraudulent conduct, Class Members have suffered actual damages.

163. Defendants knew (at the time of sale or lease and thereafter) that the Class Vehicles contained the Brake Defect, but Defendants concealed the Defect and never intended to repair or replace the Defect during the warranty periods. To date, Defendants have not provided Plaintiff and members of the Class with a repair or remedy that will eliminate the Brake Defect.

164. Defendants owed a duty to disclose the Defect and its corresponding safety hazard to Plaintiff and members of the Class because Defendants possessed superior and exclusive knowledge regarding the Defect. Rather than disclose the Defect, Defendants intentionally and

knowingly concealed, suppressed and/or omitted material facts concerning the Defect so that Defendants could sell additional Class Vehicles and avoid the cost of repair or replacement.

165. Additionally, once Defendants made representations to the public about safety, quality, functionality, and reliability, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

166. The Defect exposes drivers and occupants to an unreliable vehicle with a safety defect. Plaintiff and members of the Class had a reasonable expectation that the vehicles would not expose them and other vehicle occupants to such a safety hazard. No reasonable consumer expects a vehicle to be designed, manufactured and assembled with a braking system that, like the braking systems in the Class Vehicles, causes reduced brake performance or brake failure.

167. Plaintiff and members of the Class would not have purchased or leased the Class Vehicles but for Defendants' omissions and concealment of material facts regarding the nature and quality of the Class Vehicles and existence of the Defect, or would have paid less for the Class Vehicles.

168. Defendants knew their concealment and suppression of material facts were false and misleading and knew the effect of concealing those material facts. Defendants knew their concealment and suppression of the Defect would enable it to sell more Class Vehicles and would discourage Plaintiff and members of the Class from seeking replacement or repair of the Defect. Further, Defendants intended to induce Plaintiff and members of the Class into purchasing or leasing the Class Vehicles and to discourage them from seeking replacement or repair of the Defect, in order to decrease costs and increase profits.

169. Defendants acted with malice, oppression, and fraud.

170. Plaintiff and members of the Class reasonably relied upon Defendants' knowing concealment and omissions. As a direct and proximate result of Defendants' omissions and active concealment of material facts regarding the Defect and associated safety hazard, Plaintiff and members of the Class have suffered actual damages in an amount to be determined at trial.

RELIEF REQUESTED

171. Plaintiff, on behalf of himself and all others similarly situated, requests the Court to enter judgment against Defendants, as follows:

a) An order certifying the proposed Class and the New York Sub-Class, designating Plaintiff as named representative of the Class and Sub-Class, and designating the undersigned as Class Counsel;

b) A declaration that Defendants is financially responsible for notifying all Class Members about the defective nature of the braking system;

c) An order enjoining Defendants from further deceptive distribution, sales, and lease practices with respect to Class Vehicles; compelling Defendants to issue a voluntary recall for the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling Defendants to remove, repair, and/or replace the Class Vehicles' braking systems with suitable alternative product(s) that do not contain the Defect alleged herein; enjoining Defendants from selling the Class Vehicles with misleading information concerning the Defect; and/or compelling Defendants to reform its warranty, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed;

d) An award to Plaintiff and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;

e) A declaration that Defendants must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles, or make full restitution to Plaintiff and Class Members;

f) Any and all applicable equitable relief;

g) An award of attorneys' fees and costs, as allowed by law;

h) An award of pre-judgment and post-judgment interest, as provided by law;

i) Leave to amend the Complaint to conform to the evidence produced at trial; and

j) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

172. Plaintiff demands a trial by jury of any and all issues in this action so triable.

Dated: July 13, 2022

Respectfully Submitted,

/s/Todd S. Garber
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