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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 Marilyn Fong, individually and on behalf of  
11 all others similarly situated,

12 Plaintiff,

13 vs.

14 AUDI AG; AUDI OF AMERICA, INC.;  
15 AUDI OF AMERICA, LLC; BAYERISCHE  
16 MOTOREN WERKE AG; BMW OF  
17 NORTH AMERICA, LLC; DAIMLER AG;  
18 MERCEDES-BENZ USA; MERCEDES-  
BENZ U.S. INTERNATIONAL;  
MERCEDES-BENZ VANS, LLC; DR.  
ING. H.C.F. PORSCHE AG; PORSCHE  
CARS OF NORTH AMERICA, INC.;  
VOLKSWAGEN AG; VOLKSWAGEN  
GROUP OF AMERICA, INC.

19 Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1. Plaintiff Marilyn Fong (“Plaintiff”), on her own behalf and on behalf of all others similarly situated, brings this action for damages and injunctive relief against the following Defendants: Audi AG, Audi of America, Inc. and Audi of America, LLC (collectively “Audi”); Bayerische Motoren Werke AG and BMW of North America, LLC (collectively “BMW”); Daimler AG, Mercedes-Benz USA, Mercedes-Benz U.S. International and Mercedes-Benz Vans, LLC (collectively “Mercedes-Benz”); Dr. Ing. h.c.F. Porsche AG and Porsche Cars of North America, Inc. (collectively “Porsche”); Volkswagen AG and Volkswagen Group of America, Inc. (collectively “Volkswagen”) (collectively “Defendants”). Plaintiff alleges, based on information and investigation, as follows:

### NATURE OF THE ACTION

2. This putative class action is brought against the Defendants and co-conspirators who shared commercially-sensitive information and reached unlawful agreements regarding automotive technology, costs, suppliers, market, emissions equipment and other competitive attributes thereby causing injury to Plaintiff and class members (collectively (“Plaintiffs”).

3. This action arises out of a two decade-long conspiracy among German automotive manufacturers to stifle technological advancements, eliminate competition, and increase the prices of German automobiles. Over the last five years, Defendants met through at least 60 working groups, and 1,000 meetings, involving more than 200 employees.

4. “Class Vehicles” as used herein refers to automobiles sold by the Defendants under the following five brands: Mercedes-Benz, Porsche, Audi, BMW, and Volkswagen.

5. In a document dated July 4, 2016, Volkswagen divulged the existence of an automotive manufacturing conspiracy concerning the “development of [Defendants’] vehicles, costs, suppliers and markets for many years, at least since the 1990s, to the present day.”

6. The European Commission (“EC”) is currently investigating potentially anticompetitive activities by the Defendants.

7. Volkswagen and Daimler have reportedly admitted to participating in the

1 conspiracy and applied for leniency from the EC in exchange for their cooperation.

2 8. As a result of Defendants' anticompetitive actions, Plaintiff and the Classes paid  
3 more for Class Vehicles than they should have in a competitive market.

4 9. The Defendants' anticompetitive actions substantially affected interstate trade  
5 and commerce in the United States.

6 10. The Defendants' anticompetitive actions caused antitrust injury to Plaintiff  
7 and members of the Classes.

8 11. Plaintiff seeks to represent all persons and entities who purchased or leased a  
9 Class Vehicle from at least as early as January 1, 1990 through such time as the  
10 anticompetitive effects of the Defendants' conduct ceased ("Class Period").

11 **JURISDICTION AND VENUE**

12 12. Plaintiffs bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to  
13 secure equitable and injunctive relief against Defendants for violating Section 1 of the Sherman  
14 Act (15 U.S.C. § 1). Plaintiffs also assert claims for actual and exemplary damages pursuant to  
15 state laws, and seek restitution, damages, and other relief from the Defendants. Plaintiffs also  
16 seek attorneys' fees and costs under federal and state law.

17 13. This Court has jurisdiction over the subject matter of this action pursuant to  
18 Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15 U.S.C. § 1),  
19 and Title 28, United States Code, Sections 1331 and 1337. This Court has subject matter  
20 jurisdiction of the state law claims pursuant to 28 U.S.C. §§ 1332(d) and 1367, in that this is a  
21 class action in which the matter or controversy exceeds the sum of \$5,000,000, exclusive of  
22 interest and costs, and in which some members of the proposed Classes are citizens of a state  
23 different from the Defendants.

24 14. Venue is proper in this District pursuant to Section 12 of the Clayton Act (15  
25 U.S.C. § 22), and 28 U.S.C. §§ 1391 (b), (c), and (d), because a substantial part of the events  
26 giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the affected  
27 interstate trade and commerce discussed below has been carried out in this District, and one or  
28 more of the Defendants reside, are licensed to do business in, are doing business in, had agents

1 in, or are found or transact business in this District.

2 15. This Court has *in personam* jurisdiction over the Defendants because each,  
3 either directly or through the ownership and/or control of their subsidiaries, *inter alia*: (a)  
4 transacted business in the United States, including in this District; (b) directly or indirectly sold or  
5 marketed substantial quantities of Class Vehicles in the United States, including in this District;  
6 (c) had substantial aggregate contacts with the United States, including in this District; or (d)  
7 were engaged in an illegal conspiracy in restraint of trade that was directed at, and had a direct,  
8 substantial, reasonably foreseeable and intended effect of causing injury to, the business or  
9 property of persons and entities residing in, located in, or doing business throughout the United  
10 States, including in this District. Defendants also conduct business throughout the United States,  
11 including in this District, and have purposefully availed themselves of the laws of the United  
12 States.

13 16. Class Vehicles manufactured abroad by Defendants and sold in the United  
14 States are goods brought into the United States for sale, and therefore constitute import  
15 commerce.

16 17. Defendants engaged in conduct (both inside and outside of the United States)  
17 that caused direct, substantial and reasonably foreseeable and intended anticompetitive effects  
18 upon interstate commerce within the United States.

19 18. The activities of Defendants and their co-conspirators were within the flow of,  
20 were intended to, and did have, a substantial effect on interstate commerce in the United States.

21 19. Defendants, directly and through their agents, engaged in anticompetitive  
22 activities affecting all states.

23 20. Defendants' conspiracy and anticompetitive conduct described herein caused  
24 persons in the United States who purchased or leased a new Class Vehicles to pay unlawfully  
25 inflated prices. Defendants' anticompetitive conduct, and its effect on United States  
26 commerce, proximately caused antitrust injury in the United States.

27 ///

28 ///

**PARTIES**

**Plaintiff**

21. Plaintiff Marilyn Fong is a California resident. In or around August 2014, Ms. Fong purchased a 2014 Volkswagen Golf TDI in Salinas, California. Ms. Fong suffered injury as a result of Defendants' illegal conduct as alleged herein.

**Defendants**

22. When Plaintiffs refer to a corporate family or companies by a single name in the Complaint, they are alleging that one or more employees or agents of entities within that corporate family engaged in conspiratorial acts on behalf of every company in that family. The individual participants entered into agreements on behalf of their respective corporate families.

**The Audi Defendants**

23. Defendant Audi AG is a German corporation with its principal place of business in Ingolstadt, Germany. Audi AG is the parent company of Audi of America, Inc. and Audi of America, LLC and also is a wholly owned subsidiary of Volkswagen AG. Audi AG designs, develops, manufactures, and sells the Class Vehicles at issue that were purchased throughout the United States, including this district during the Class Period. Audi AG directs the activities of its subsidiaries which act as its agents selling Class Vehicles throughout the United States.

24. Defendant Audi of America, Inc. is incorporated in New Jersey, and does business in all fifty states and the District of Columbia, with its principal place of business in Herndon, Virginia.

25. Defendant Audi of America, LLC is incorporated in Delaware, and does business in all fifty states and the District of Columbia, with its principal place of business in Herndon, Virginia. Audi of America, LLC is a wholly owned subsidiary of Audi AG, and it engages in business, including the advertising, marketing, and sale of Audi automobiles, throughout the United States.

**The BMW Defendants**

26. Defendant Bayerische Motoren Werke AG ("BMW AG") is a German holding company and vehicle manufacturer. BMW AG is headquartered in Germany. BMW AG,

1 together with its subsidiaries, develops, manufactures, and sells cars and motorcycles worldwide,  
2 including the Class Vehicles at issue that were purchased throughout the United States,  
3 including this district during the Class Period.

4 27. Defendant BMW North America, LLC is a Delaware limited liability corporation  
5 with its principal place of business in Woodcliff Lake, New Jersey. BMW of North America is  
6 the United States importer of BMW vehicles.

7 **The Mercedes-Benz Defendants**

8 28. Defendant Daimler Aktiengesellschaft ("Daimler AG") is a foreign corporation  
9 headquartered in Stuttgart, Germany. Daimler AG designs, engineers, manufactures, tests,  
10 markets, supplies, sells and distributes the Class Vehicles at issue that were purchased throughout  
11 the United States, including this District, during the Class Period. Daimler AG is the parent  
12 company of Mercedes-Benz USA, LLC.

13 29. Defendant Mercedes-Benz USA, LLC is a Delaware limited liability corporation  
14 with its principal place of business in Atlanta, Georgia. Mercedes-Benz USA LLC operates a  
15 regional sales office, a parts distribution center, and a customer service center in New Jersey.  
16 Mercedes-Benz USA, LLC designs, manufactures, markets, distributes and sells the Class  
17 Vehicles at issue that were purchased throughout the United States, including this District,  
18 during the Class Period.

19 30. Defendant Mercedes-Benz U.S. International, Inc. is a corporation organized and  
20 existing under the laws of Alabama, with its principal place of business in Vance, Alabama.  
21 Mercedes-Benz U.S. International, Inc. is a wholly-owned subsidiary of Daimler AG. Mercedes-  
22 Benz U.S. International, Inc. manufactures Daimler-Mercedes diesel vehicles distributed and  
23 sold throughout the United States, including this District, during the Class Period.

24 31. Defendant Mercedes-Benz Vans, LLC is a Delaware limited liability corporation  
25 with its principal place of business in Ladson, South Carolina. Mercedes-Benz Vans, LLC is a  
26 wholly owned U.S. subsidiary of Daimler AG. Mercedes-Benz Vans, LLC manufactures  
27 Daimler-Mercedes diesel vehicles distributed and sold throughout the United States, including  
28 this District, during the Class Period.

**The Porsche Defendants**

32. Defendant Dr. Ing. h.c. F. Porsche AG is a German corporation with its principal place of business located in Stuttgart, Germany. Porsche AG is a wholly-owned subsidiary of Volkswagen AG. Porsche AG designs, develops, manufactures, and sells the Class Vehicles at issue that were purchased throughout the United States, including this district during the Class Period.

33. Defendant Porsche Cars North America, Inc. is incorporated in Delaware with its principal place of business in Atlanta, Georgia. Porsche Cars North America, Inc. is a wholly-owned U.S. subsidiary of Porsche AG and advertises, markets, and sells Class Vehicles in all fifty states. Porsche Cars North America, Inc. maintains a network of 189 dealers throughout the United States.

**The Volkswagen Defendants**

34. Defendant Volkswagen AG is a German corporation with its principal place of business in Wolfsburg, Germany. Volkswagen AG is the parent company of Volkswagen Group of America, Inc., Audi AG, and Porsche AG.

35. Defendant Volkswagen Group of America, Inc. is incorporated in New Jersey, and does business in all fifty states and the District of Columbia, with its principal place of business in Herndon, Virginia. Volkswagen Group of America, Inc. advertises, markets, and sells Volkswagen vehicles through the United States, including in this district during the Class Period.

**AGENTS AND CO-CONSPIRATORS**

36. Each Defendant acted as the principal of or agent for the other Defendant with respect to the acts, violations, and common course of conduct alleged herein.

37. Robert Bosch GmbH is a German multinational engineering and electronics company headquartered in Gerlingen, Germany. Robert Bosch GmbH, directly and/or through its North-American subsidiary Robert Bosch LLC designs, manufactures, develops, and supplies automotive technology.

38. Robert Bosch LLC is a Delaware limited liability company with its principal

1 place of business in Farmington Hills, Michigan. Robert Bosch LLC is wholly owned and  
2 controlled by Robert Bosch GmbH. Robert Bosch LLC worked in conjunction with its parent  
3 company—Robert Bosch GmbH—to design, manufacture, develop, and supply automotive  
4 technology to the Defendants for use in the Class Vehicles.

5 39. Various other persons, partnerships, sole proprietors, firms, corporations and  
6 individuals not named as Defendants in this lawsuit, and individuals, the identities of which are  
7 presently unknown, have participated as co-conspirators with the Defendants in the offenses  
8 alleged in this Complaint, and have performed acts and made statements in furtherance of the  
9 conspiracy or in furtherance of the anticompetitive conduct.

### 10 **FACTUAL ALLEGATIONS**

11 40. Beginning at least as early as the 1990s, Defendants shared competitive and  
12 sensitive information, and entered into agreements regarding technology, costs, suppliers,  
13 market, emissions equipment and other competitive attributes of their automobiles.

14 41. Defendant “working groups” met hundreds (if not thousands) of times to share  
15 non-public, commercially-sensitive information and otherwise colluded to eliminate and  
16 restrain competition. Over the last five years alone, Defendants shared competitively sensitive  
17 information through 60 working groups and over 1,000 meetings. These contacts involved at  
18 least 200 employees.

19 42. Defendants agreed to restrict competition with respect to technological  
20 developments. Working group meetings established rules specifying that no one manufacturer  
21 could be so far ahead in terms of innovations that it would cause another to lose sales.  
22 According to *Der Spiegel*, “When a manufacturer introduced a breakthrough technology, the  
23 others had to be capable of offering this technology relatively quickly as well.” The Defendants  
24 thus created their own market dominance by not competing on technology.

25 43. Due to the conspiracy alleged herein, the normal pace of innovation was replaced  
26 by cartel-dictated staging.

27 44. The German publication *Der Spiegel* first broke news of this conspiracy by  
28 publishing a report on the cooperation between Audi, BMW, Mercedes-Benz, Porsche, and



1 Volkswagen on July 21, 2017.

2 45. Defendants limited manufacturer membership in the conspiracy. During the Class  
3 Period, Defendants rejected requests from Jaguar, Volvo, Renault, and Fiat to join their exchange  
4 of information.

5 46. Defendants' anticompetitive activities have prompted competition international  
6 authorities to open investigations into the Defendants' conduct.

7 **The AdBlue Tank Agreements**

8 47. Defendants coordinated the size of AdBlue tanks used in Class Vehicles.

9 48. AdBlue is an aqueous reductant agent that is used with a Selective Catalytic  
10 Reduction ("SCR") system to clean the emissions disseminated from diesel vehicles. AdBlue  
11 tanks are also called Diesel Exhaust Fluid ("DEF"). Urea is a component of DEF and  
12 AdBlue. Specifically, 32.5% of high grade environmental urea and 67.5% deionized water  
13 make up what is known as DEF or AdBlue. AdBlue/DEF, along with the SCR system, enables  
14 manufacturers to remain compliant with emissions standards.

15 49. In around September 2008, Defendants unlawfully agreed to reduce their costs  
16 by using 8-liter tanks for AdBlue/DEF. According to Volkswagen, "[a]n internal Audi  
17 presentation resulted in a commitment by German automobile manufacturers at the executive  
18 level" to collude on tank size. The Defendants believed that use of such tanks would save the  
19 equivalent of about €80 per vehicle.

20 50. The 8-liter tank also created more cargo room for luxury items such as golf  
21 clubs, and allowed for additional premium vehicle options.

22 51. In 2010, Defendants agreed to change the size of their AdBlue tanks in the U.S. to  
23 16-liters. Although Defendants knew that a 16-liter tank was insufficient to meet new U.S.  
24 emissions standards, they agreed to a 16-liter tank in order to maintain a "coordinated approach"  
25 with respect to tank sizes. The "coordinated approach" was designed to prevent U.S. emissions  
26 regulators from questioning how some companies could use less AdBlue to meet emissions  
27 standards while others needed more.

28 52. Defendant Audi wrote in an email that a "minimum tank volume of 19 liters"

1 was needed based on “average AdBlue consumption” to comply with U.S. requirements. *Der*  
2 *Spiegel* has reported that the Defendants’ found it “absolutely necessary to have a ‘coordinated  
3 approach’ with respect to tank sizes.”

4 53. Volkswagen knew that it could still pass U.S. emissions testing with a 16-liter  
5 tank because it had designed a work-around that enabled its vehicles to pass emissions testing  
6 even without adequately sized AdBlue tanks.

7 54. This work-around is commonly referred to as a “defeat device” and is at the heart  
8 of Volkswagen’s infamous 2015 “diesel-gate” scandal. Volkswagen and its subsidiaries  
9 installed software in its vehicles that could sense when the car was being tested and make  
10 emission control adjustments so that the vehicles’ emissions were lower during testing than on  
11 the road.

12 55. Volkswagen admitted to using this defeat device software to lie and mislead the  
13 Environmental Protection Agency (“EPA”) and U.S. consumers regarding the environmental  
14 friendliness of their “clean” vehicles. Volkswagen paid over \$20 billion in civil and criminal  
15 penalties for deploying the “defeat device” to cheat emissions compliance regulations, *In re*  
16 *Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litig.*, MDL No.  
17 2672 CRB (JSC) (“Volkswagen ‘Clean Diesel’ Litigation”) (settlement of \$14.7 billion for the  
18 consumer class); *United States v. Volkswagen AG*, No. 16-cr-20394 (E.D. Mich. 2016)  
19 (settlement with DOJ for \$ 4.3 billion). There is currently a class action pending against  
20 Mercedes for similar conduct, *Albers et al. v. Mercedes-Benz USA LLC*, No. 16-881 (D.N.J.  
21 2017).

22 56. As recently revealed, the conspirators determined that a “coordinated scenario”  
23 was needed “across the board” to “avoid at all costs” an “arms race” among the manufacturers.  
24 This “coordinated scenario” eliminated competition and the benefits of innovation that flow from  
25 competition.

26 **Other Agreements to Limit Technology**

27 57. Defendants conspired on virtually all areas of technological innovation. These  
28 agreements resulted in improvements in design and engineering occurring in near-lock-step.

1           58. One of the Defendants' working groups set the maximum speed at which  
2 convertible roofs could be opened and closed (50 kilometers per hour).

3           59. The "clutch" working group discussed when the parking lock should be activated,  
4 and minutes following a group meeting specifically sought clarification as to whether there was a  
5 "working group standstill agreement."

6           60. Other working groups focused on brake controls and seat systems.

7           61. On or about September 24, 2013, the "air suspension" working group met to  
8 exchange information about supplier performance, presumably with the goal of determining who  
9 would continue supplying the cartel. In this particular meeting, Mercedes-Benz and Porsche  
10 shared specific information about the performance of ZF Friedrichshafen, a company that had  
11 been supplying Defendants with parts for suspensions.

12           **Defendants Targeted Marketing and Sales to U.S. Consumers**

13           62. The Defendants carefully curated their marketing and targeted U.S. consumers for  
14 decades. The Defendants have sold millions of vehicles to consumers throughout the United  
15 States during the class period.

16           63. In a 2014 Super Bowl advertisement from Volkswagen, German engineers  
17 sprouted wings each time a Volkswagen automobile reached 100,000 miles.

18           64. Claims of superior design and technology have been at the heart of BMW's  
19 marketing in the United States for decades. BMW advertises its automobiles in the United States  
20 as "the ultimate driving machine," powered by "performance, design, innovation and efficiency."

21           65. BMW has promoted its cars, including the cars of its subsidiary, MINI USA, in  
22 American entertainment. As one example, the MINI Cooper S was featured in the video game  
23 *The Bourne Conspiracy*, released by Vivendi Games in the United States in June 2008.

24           66. Another example of BMW product placement in the United States with a heavy  
25 focus on technology is *The Italian Job*, an American movie released in 2003 that featured  
26 numerous car chase scenes in which drivers of MINI Coopers (a BMW subsidiary) are chased by  
27 motorcycles through tunnels. The movie showcased the highly recognizable MINI Coopers as  
28 high-performance vehicles.

1           67. Mercedes-Benz similarly publicizes its engineering innovation, targeting U.S.  
2 consumers. In 2011, Mercedes-Benz launched a brand campaign celebrating “125 Years of  
3 Innovation.” The Mercedes-Benz USA website touts Daimler’s history as an innovator to U.S.  
4 consumers: “Leading through innovation. Even more than its meticulous engineering, Mercedes-  
5 Benz is defined by its continuous innovation. Since inventing the car in 1886, we’ve simply  
6 never stopped reinventing it.”

7           **The Defendants Met with U.S. Regulators to Obtain Permission to Sell Vehicles in the**  
8           **United States**

9           68. The State of California has passed laws to protect its citizens from pollution.  
10 Automobile manufacturers selling vehicles in California and in states adopting California  
11 standards must abide by these laws, which are enforced by the California Air Resources Board  
12 (“CARB”).

13           69. The Defendants specifically sought approval from U.S. regulators of vehicles built  
14 specifically for sale to U.S. consumers. The Defendants’ conspiracy targeted CARB with respect  
15 to their “clean diesel” agreements.

16           70. To encourage the Environmental Protection Agency (“EPA”) and CARB  
17 regulators to permit the sale of diesel automobiles in the United States, the Defendants engaged  
18 in marketing campaigns that included shipping vehicles from Germany to the United States so  
19 that regulators could drive them.

20           71. For example, German manufacturers, including Mercedes-Benz and VW,  
21 participated in a “Clean Diesel Media Ride-and-Drive” hosted by Bosch on January 31, 2006,  
22 followed by a February 2, 2006 “Clean Diesel Symposium” in Sacramento, California. The  
23 Clean Diesel events targeted journalists, environmentalists, policymakers, and regulators to  
24 promote “the benefits of modern clean diesel technology and understand the role of clean diesel  
25 vehicles for California’s consumers.”

26           72. Defendants’ U.S. subsidiaries acted as agents to their German parents in  
27 connection with the sale and marketing of German Automobiles. Defendants’ U.S. subsidiaries  
28 played an important role in implementing the scheme. Defendants’ U.S. subsidiaries sold and

1 marketed the Class Vehicles and negotiated with U.S. and California regulators regarding  
2 compliance with emissions requirements and other U.S. law.

3 73. Each of the Defendants has a subsidiary with a presence in this District, as  
4 individuals the San Francisco Bay Area purchase tens of thousands of German Automobiles a  
5 year.

6 **The Market for German Automobiles**

7 74. German automobiles are a differentiated product market and are distinct from  
8 those manufactured by competitors.

9 75. Each Defendant knew and understood that its closest competition among U.S.  
10 consumers were the other Defendants. Second-choice surveys of German automobile purchases  
11 consistently show that consumers who purchased automobiles from one of the Defendants would  
12 have purchased from another Defendant group.

13 76. The Defendants' collusive activities were in stark contrast with general market  
14 perception of German auto manufacturers, which Defendants actively cultivated.

15 77. German automobiles are, by reputation, among the best-engineered vehicles in the  
16 world. The Defendants have spent many millions of dollars advertising the virtues of German  
17 engineering.

18 78. Volkswagen's long used tagline, "That's the power of German engineering,"  
19 conveyed that customers would receive cutting edge technology. "Volkswagen has long touted  
20 'German engineering' as the key difference between its cars and their competitors."  
21 Volkswagen's Vice President of Marketing, Vinay Shahani, noted of the ad, "We are thrilled  
22 with this year's creative, which highlights the enthusiasm around our brand and our vehicles'  
23 German engineering in a humorous spot that embodies the Volkswagen spirit."

24 79. BMW boasts of its "pure BMW performance" and "innovative eDrive  
25 technology" and claims that "[a]t the heart of every BMW is advanced engineering that ensures  
26 maximum power and performance." "Always innovative, BMW has pioneered technology that  
27 creates exhilarating and efficient driving experiences," BMW claims. BMW publicized its 45  
28 years of Bavarian engineering excellence in part by producing a six-part video on the history of

1 the 5-Series.

2 80. Audi's company motto is "Vorsprung durch Technik," or "advantage [over other  
3 companies] through technology." Audi has also used the tagline "Truth in Engineering" in its  
4 print and television advertising.

5 81. German automobiles command a premium price in the United States due to  
6 promises of superior innovation and engineering. That Defendants have shared cost information  
7 with one another ensures that Class Vehicles are consistently priced at a premium.

8 82. Defendants shared competitively sensitive information concerning their costs,  
9 suppliers, as well as many aspects of automobile design and testing. The information shared by  
10 the Defendants enabled them to determine the prices at which German Automobiles were to be  
11 sold.

12 83. Ordinarily, innovation is strongly correlated with competition and the market  
13 rewards innovators by supporting their products priced at a premium.

14 84. Due to their unique place in the U.S. market, brand equity, and marketing  
15 campaigns, the Defendants enjoy price inelasticity for their automobiles. Price inelasticity means  
16 that because demand for Class Vehicles is strong, consumers will continue to purchase Class  
17 Vehicles even if prices increase or are high relative to other automobiles.

18 85. Defendants' secret agreements to let the Defendants appear as innovators  
19 permitted them to levy unlawful, unearned premiums for their automobiles sold in the United  
20 States.

21 86. Class members thus paid a premium for German Automobiles across classes of  
22 automobiles because the Defendants had a reputation for engineering excellence and cutting edge  
23 technology.

24 87. The premiums paid are supra-competitive because the Defendants used their  
25 market power to suppress competition for the very technological advances consumers sought.

26 **Pending Investigations**

27 88. On July 22, 2017, the European Commission ("EC") announced that it was  
28 investigating allegations of an antitrust cartel among a group of major German automobile

1 manufacturers including Defendants Volkswagen and its subsidiaries, Audi and Porsche,  
2 Daimler, and its subsidiaries Mercedes-Benz and Smart, and BMW.

3 89. European antitrust officials, the EC and its German counterpart, the  
4 Bundeskartellamt, have all confirmed that they received information from the Defendants that  
5 may relate to the operation of an antitrust cartel dating back as early as the 1990s.

6 90. As part of its investigation, the EC has confiscated documents from the  
7 Defendants and interviewed witnesses in connection with the alleged cartel.

8 91. According to Volkswagen's admissions to German antitrust officials, the  
9 Defendants entered into potentially unlawful agreements regarding "vehicle development,  
10 brakes, petrol and diesel engines, clutches and transmissions as well as exhaust treatment  
11 systems."

12 92. According to reports, Volkswagen and Mercedes-Benz (Daimler) have both  
13 come forward to European regulators admitting participation in an antitrust conspiracy and  
14 attempted to receive leniency. Mercedes-Benz (Daimler) has reportedly obtained leniency while  
15 Volkswagen is purportedly eligible for a reduction in fines in exchange for its cooperation.

16 93. The United States Department of Justice's Antitrust Division announced on or  
17 about July 25, 2017 that it is also investigating the matter.

18 **Defendants' Past Violations and Collusion**

19 94. This is only the most recent of many schemes by the Defendants and other  
20 automobile manufacturers to evade U.S. laws.

21 95. As stated *supra* Volkswagen admitted that it used unlawful "defeat devices" to  
22 cheat on diesel emissions tests. In the United States alone, Volkswagen has paid more than  
23 \$20 billion in criminal penalties and civil restitution as a result of its unlawful scheme.

24 96. In 2016, Daimler and other European truck makers (including Volkswagen-  
25 owned, MAN) were revealed to be parties to a truck price-fixing cartel. Volkswagen avoided fines  
26 by seeking leniency in exchange for cooperation with regulators. Daimler paid more than \$1  
27 billion in fines to the EC for its role in the cartel.

28 ///

**The Class Vehicles Market is Susceptible to Collusion**

97. The market for Class Vehicle market in the United States has characteristics that make it susceptible to collusion. Those characteristics are (1) high barriers to entry; (2) inelasticity of demand; and (3) high concentration.

98. **High Barriers to Entry:** Collusion that lowers costs for manufacturers while increasing the price of the product normally would attract new market entrants. However, where barriers to entry are high, new entrants are less likely to enter in response to supra-competitive pricing. Barriers to entry thus facilitate cartels.

99. Here, there are substantial barriers to entry into the Class Vehicle market. Firms entering this market need to invest tens of millions of dollars in research and development, including engineering talent. Competitor firms would need to invest tens of millions of dollars more to build facilities and obtain the raw materials in order to produce automobiles.

100. A new entrant also lacks long-standing customer relationships of incumbents.

101. Notably, no non-German manufacturer was invited into the conspiracy, and no other significant German automobile manufacturer competed in any material way in U.S. sales during the Class Period.

102. There are also high switching costs in that consumers are effectively locked into their Class Vehicle purchases, making it more difficult for new entrants to gain customers needed to succeed in the market.

103. Defendants' unlawful collusion also serves as and increases the barriers to entry.

104. **Inelastic Demand:** The Class Vehicle market also has inelastic demand.

105. "Elasticity" is the sensitivity of changes of supply to changes in demand and vice versa.

106. When demand is relatively inelastic, a market is more susceptible to a successful cartel because the cartel can raise prices without an off-setting decline in demand.

107. Demand for Class Vehicles is highly inelastic. There are no close substitutes for Class Vehicles, such that price increases do not trigger product substitution by consumers.

108. **High Concentration:** A highly concentrated market also is more susceptible to



collusion.

109. Here, Defendants make up essentially 100% of the Class Vehicle market.

### **CLASS ALLEGATIONS**

110. Plaintiff brings this action both on behalf of herself and all others similarly situated (the “Classes”) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2) and (b)(3). The Classes are defined as follows:

111. A “Nationwide Class” seeking equitable and injunctive relief defined as follows:

All persons and entities who, during the Class Period, purchased or leased, in the United States, a new German Diesel Passenger Vehicle (as an indirect purchaser, and not for resale), which was manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of the Defendants.

Excluded from the Class are the Defendants, their parent companies, subsidiaries, and affiliates, any co-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.

112. The “California Law Class” (including as further defined in the Claims section below) seeking damages pursuant to California laws, defined as follows:

All persons and entities who, during the Class Period, purchased or leased, in California, a new German Diesel Passenger Vehicle (as an indirect purchaser, and not for resale), which was manufactured or sold by a Defendant, any current or former subsidiary of a Defendant, or any co-conspirator of the Defendants.

Excluded from the Class are the Defendants, their parent companies, subsidiaries, and affiliates, any co-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.

113. 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 Plaintiff reserves the right to join additional class representatives.

1           114. The Classes are individually so numerous that joinder of all members is  
2 impracticable. Even though the exact number of members of the Class is unknown at this time,  
3 based on the nature of the trade and commerce involved, Plaintiff reasonably believes that there  
4 are at least thousands of members in the Classes and that their identities can be readily ascertained  
5 from records in the possession of Defendants and/or third parties.

6           115. Class members are geographically dispersed throughout the United States and its  
7 territories.

8           116. Plaintiff's claims are typical of the claims of the other members of the Classes  
9 because Plaintiff and the Class members were similarly affected by the Defendants' wrongful  
10 conduct in that they paid artificially inflated prices and maintenance costs for Class Vehicles  
11 purchased or leased from the Defendants (or their subsidiaries or co-conspirators).

12           117. Plaintiff and members of the Classes have all sustained damages during the Class  
13 Period as a result of having purchased or leased one or more Class Vehicles indirectly (i.e., from a  
14 franchised dealership of one of the Defendants) from Defendants (or their subsidiaries or co-  
15 conspirators) at supra-competitive prices. Defendants and their co-conspirators' anticompetitive  
16 conduct alleged herein, the impact of such conduct, and the relief sought are all issues or  
17 questions that are common to Plaintiff and the Classes.

18           118. Plaintiff will fairly and adequately protect the interests of the Classes and has  
19 retained counsel competent and experienced in class action, antitrust, and consumer protection  
20 litigation. Plaintiff's interests are coincident with, and not antagonistic to, the interests of the  
21 Classes.

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

24           (a) Whether the Defendants and their co-conspirators engaged in a  
25 combination and conspiracy to restrain competition and artificially inflate the price of, and  
26 otherwise eliminate or restrain competition concerning, Class Vehicles sold in the United  
27 States;

28           (b) The identity of the conspirators;

          (c) The duration of the conspiracy and the acts carried out by Defendants and

1 their co-conspirators in furtherance of the conspiracy;

2 (d) Whether the conspiracy violated the Sherman Act;

3 (e) Whether the alleged conspiracy violated state antitrust, unfair  
4 competition, and/or consumer protection laws;

5 (f) Whether the Defendants unjustly enriched themselves to the detriment  
6 of the Plaintiff and the members of the Classes entitling Plaintiff and the Classes to  
7 disgorgement of benefits derived by Defendants;

8 (g) Whether the conduct of the conspirators, as alleged in this Complaint,  
9 caused injury to the business or property of Plaintiff and the members of the Classes;

10 (h) The effect of the conspiracy on the prices of Class Vehicles sold in the  
11 United States during the Class Period;

12 (i) Whether Plaintiff and the members of the Classes had any reason to know  
13 or suspect the conspiracy, or any means to discover the conspiracy;

14 (j) Whether the conspirators fraudulently concealed the conspiracy's  
15 existence from Plaintiff and the members of the Classes;

16 (k) The appropriate injunctive and related equitable relief for the Classes;  
17 and

18 (l) The appropriate class-wide measure of damages for the Classes.

19 120. A class action is superior to other available methods for the fair and efficient  
20 adjudication of this controversy because joinder of all members of the Classes is impracticable.

21 121. The prosecution of separate actions by individual members of the Classes would  
22 impose heavy burdens upon the courts and the parties, and would create a risk of inconsistent or  
23 varying adjudications of the questions of law and fact common to the Class. A class action would  
24 achieve substantial economies of time, effort, and expense, and would assure uniformity of  
25 decision as to persons similarly situated without sacrificing procedural fairness. There will be no  
26 material difficulty in the management of this action as a class action on behalf of the Class.  
27 Although the laws of different states are implicated in this Complaint, these laws are substantially  
28 similar to one another and can be grouped together in manageable categories.

122. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for the Defendants.

**PLAINTIFF'S CLAIMS ARE NOT BARRED BY**  
**THE STATUTE OF LIMITATIONS**

**Plaintiff Did Not and Could Not Discover Claims Until at Least July 21, 2017**

123. Plaintiff and members of the Classes had no knowledge of the conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until (at the earliest) July 21, 2017, when the German publication *Der Spiegel* reported that Volkswagen disclosed its participation in the unlawful conspiracy.

124. Plaintiff and members of the Classes are consumers and businesses that purchased or leased Defendants' Class Vehicles in the United States and not for resale. They had no direct relationship or communication with the Defendants and therefore had no means by which they could have discovered the combination and conspiracy described before it began to be revealed in *Der Spiegel*.

125. No information was available to Plaintiff and members of the Classes in the public domain prior to July 21, 2017 that disclosed Defendants' participation in unlawful coordination concerning the development of their vehicles, their costs and suppliers, or their and strategies for controlling emissions in diesel engines.

126. For these reasons, the statute of limitations as to Plaintiff and the Classes' claims did not begin to run, and has been tolled with respect to the claims that Plaintiff and members of the Classes have alleged herein.

127. All applicable statutes of limitations for Plaintiff and the Classes' claims have been tolled under the doctrine of fraudulent concealment. Plaintiff and members of the Classes did not discover, and could not have discovered through reasonable diligence, the existence of the conspiracy alleged herein until at least July 21, 2017, when *Der Spiegel* began to disclose the Defendants' conspiracy.

128. Before that time, Plaintiff and members of the Classes were unaware of

1 Defendants' unlawful conduct, and did not know before then that they were paying supra-  
2 competitive prices for Class Vehicles throughout the United States during the Class Period. No  
3 information, actual or constructive, was made available to Plaintiff and members of the Classes  
4 that indicated to Plaintiffs that they were being injured by Defendants' unlawful conduct.  
5 Moreover, the affirmative acts of Defendants, including acts in furtherance of the conspiracy,  
6 were wrongfully concealed and carried out in a manner that precluded detection, including  
7 through years of admittedly "secret" meetings.

8 129. The Defendants' conspiracy also was inherently self-concealing. Class  
9 Vehicles are subject to antitrust regulation. A reasonable person under the circumstances would  
10 have believed the industry was competitive and not have been alerted to begin to investigate  
11 the legitimacy of Defendants' Class Vehicle prices before July 21, 2017 at the earliest.

12 130. Plaintiff and the members of the Classes could not have discovered the alleged  
13 contract, combination or conspiracy at an earlier date by the exercise of reasonable diligence  
14 because of the deceptive practices and techniques of secrecy employed by the Defendants and  
15 their co-conspirators to avoid detection of, and fraudulently conceal, their contract,  
16 combination, or conspiracy.

17 131. Throughout the course of the conspiracy, Defendants met secretly to  
18 communicate, and ultimately coordinate, about various aspects of the Class Vehicles  
19 industry, including technology, costs, supplies, markets, and emissions equipment. The  
20 Defendants' surreptitious meetings were concealed until at least July 21, 2017

21 132. Because the alleged conspiracy was both self-concealing and affirmatively  
22 concealed by Defendants and their co-conspirators, Plaintiff and members of the Classes had no  
23 knowledge of the alleged conspiracy, or of any facts or information that would have caused a  
24 reasonably diligent person to investigate whether a conspiracy existed, until at least July 21,  
25 2017, when *Der Spiegel* began to report Volkswagen's disclosure of the conspiracy.

26 133. For these reasons, the statute of limitations applicable to Plaintiff and the  
27 Classes' claims was tolled and did not begin to run until, at the earliest July 21, 2017.

28 ///

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**Violation of Section 1 of the Sherman Act**

**(Nationwide Class)**

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

135. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, combination and/or conspiracy in restraint of trade to artificially raise, fix, maintain, or stabilize prices for Class Vehicles sold in the United States, in violation of Section 1 of the Sherman Act

136. The contract, combination or conspiracy resulted in an agreement, understanding or concerted action between and among the Defendants and their co-conspirators in furtherance of which the Defendants and their co-conspirators fixed, raised, maintained, and/or stabilized prices for Class Vehicles sold in the United States. Such contract, combination, or conspiracy constitutes a *per se* violation of the federal antitrust laws.

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

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

139. Defendants succeeded in fixing, raising, and/or stabilizing the prices of Class Vehicles sold in the United States during the Class Period.

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

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

- i. Price competition in the United States market for vehicles has been

restrained, suppressed, and/or eliminated; and,

ii. Prices in the United States for Class Vehicles sold by Defendants and their coconspirators have been fixed, raised, maintained, and/or stabilized at artificial supra-competitive levels.

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

143. Plaintiff and members of the Class are entitled to an injunction against Defendants in order to stop the violations alleged herein.

## SECOND CLAIM FOR RELIEF

### Violation of State Antitrust and Unfair Competition Laws

#### (California Law Class)

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

145. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, combination or conspiracy in restraint of trade to artificially raise, fix, maintain, and/or stabilize prices for Class Vehicles sold in the United States, in violation of the state antitrust and unfair competition laws set forth below.

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

147. Defendants succeeded in fixing, raising, maintaining and/or stabilizing the prices of Class Vehicles sold in the United States during the Class Period.

148. For purposes of formulating and effectuating their conspiracy, Defendants and

1 their co-conspirators did those things they conspired to do, including but not limited to the acts,  
2 practices and course of conduct set forth herein.

3 149. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and the  
4 other members of the Classes have been injured (and will continue to be injured) in their  
5 businesses or property in that they have paid more for Class Vehicles than they otherwise would  
6 have paid in a competitive market and incurred increased maintenance costs.

7 150. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the  
8 Classes seek relief as permitted, including injunctive relief, damages and costs of suit, including  
9 reasonable attorneys' fees.

10 151. By reason of the foregoing, and the fact that competition for Class Vehicles was  
11 restrained, suppressed, and eliminated throughout California, Defendants' conduct of entering  
12 into agreements in restraint of trade is in violation of California Bus. & Prof. Code §§ 16700, *et*  
13 *seq.*

### 14 **THIRD CLAIM FOR RELIEF**

#### 15 **Violation of State Unfair Trade Practice Laws**

#### 16 **(California Law Class)**

17 152. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every  
18 allegation set forth in the preceding paragraphs of this Complaint.

19 153. During the Class Period, Defendants engaged in unfair competition or unfair,  
20 unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer  
21 protection and unfair trade practices set forth below.

22 154. The affirmative acts of Defendants, including acts in furtherance of the conspiracy,  
23 were wrongfully and fraudulently concealed by Defendants and carried out in a manner that  
24 precluded detection, including public statements regarding competition by Defendants' top  
25 leadership.

26 155. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and the  
27 other members of the Classes have been injured (and will continue to be injured) in their  
28 businesses or property.



156. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the Classes seek relief as permitted, including injunctive relief, damages and costs of suit, including reasonable attorneys' fees.

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

#### FOURTH CLAIM FOR RELIEF

#### Unjust Enrichment and Disgorgement

#### (California Law Class)

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

159. During the Class Period, the Defendants have been unjustly enriched through overpayments by Plaintiff and other members of the Classes through the resulting profits enjoyed by Defendants as a direct result of such overpayments.

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

161. The Defendants have been enriched and Plaintiff and other members of the Classes have been impoverished as a result of the Defendants' enrichment.

162. The Defendants financially benefited, appreciated the benefit, and accepted the benefit conveyed upon them by Plaintiff and other members of the Classes as a result of the conduct alleged herein.

163. The Defendants' enrichment was unjustified.

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

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

Classes.

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

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

168. Plaintiff and other members of the Classes, therefore, seek disgorgement of all profits resulting from such overpayments, and establishment of a constructive trust from which Plaintiff and other members of the Classes may seek restitution, under the laws of California.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

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

B. Appoint Plaintiff as Class Representative for the Classes, and Counsel of Record as Lead Class counsel;

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

i. An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

ii. A per se violation of Section 1 of the Sherman Act; and,

iii. An unlawful combination, trust, agreement, understanding and/or concert of action in violation of the state antitrust and unfair competition laws set forth herein, as well as in violation of the state and consumer protection and unfair trade practice laws set forth herein.

D. Award damages to Plaintiff and the members of the California Law Class, to the maximum extent allowed, and enter a joint and several judgment in favor of Plaintiff and the members of such classes against Defendants, in an amount to be trebled to the extent allowed;

E. Award restitution and/or disgorgement of profits unlawfully gained to Plaintiff and

members of the California Law Class, to the maximum extent allowed;

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

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

H. Award Plaintiff and the members of the Classes their costs of suit, including reasonable attorneys' fees, as provided by law; and,

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

**DEMAND FOR JURY TRIAL**

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

Dated: October 4, 2017

Respectfully submitted,

MINAMI TAMAKI LLP

By: /s/ Sean Tamura-Sato  
Sean Tamura-Sato

Counsel for Plaintiff Marilyn Fong

**CIVIL COVER SHEET**

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

**I. (a) PLAINTIFFS**

Fong, Marilyn, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Francisco  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sean Tamura-Sato, Lisa P. Mak,  
Minami Tamaki, LLP, 360 Post Street, 8th Floor, San Francisco,  
California, 94108, Telephone: (415) 788-9000

**DEFENDANTS**

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

County of Residence of First Listed Defendant Fairfax  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).

Violation of Section 16 of the Clayton Act 15 U.S.C. § 26 and Section 1 of the Sherman Act 15 U.S.C. § 1.

Brief description of cause.

Automotive manufacturing conspiracy.

**VII. REQUESTED IN COMPLAINT:**

- ☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Charles R. Breyer

DOCKET NUMBER 3:17-04314 and 4:17-04320

DATE

10/04/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Sean Tamura-Sato

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Marilyn Fong, individually and on behalf of all others  
similarly situated,

\_\_\_\_\_  
*Plaintiff(s)*

v.

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

\_\_\_\_\_  
*Defendant(s)*

Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* See Attachment A

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sean Tamura-Sato  
Minami Tamaki, LLP,  
360 Post Street, 8th Floor,  
San Francisco, California, 94108,  
Tel: (415) 788-9000  
Fax: (415) 398-3887

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

**Attachment A to Summons**

	<b>Defendant</b>	<b>Service Address</b>	<b>Address of Principal Place of Business</b>
1	Audi AG	Corporation Service Company 2711 Centerville Road Wilmington, DE 19808	Ingolstadt, Germany
2	Audi of America, Inc.	Corporation Service Company Bank of America Center 1111 East Main Street Richmond, Virginia 23219	2200 Ferdinand Porsche Drive Herndon, VA 20171
3	Audi of America, I.I.C	Corporation Service Company 2711 Centerville Road Wilmington, DE 19808	2200 Ferdinand Porsche Drive Herndon, VA 20171
4	Bayerische Motoren Werke AG	Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Munich, Germany 80788
5	BMW of North America, LLC	Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	300 Chestnut Ridge Road Woodcliff Lake, NJ 07675
6	Daimler AG	Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Stuttgart, Germany
7	Mercedes-Benz USA	Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	303 Perimeter Center North, Suite 202 Atlanta, GA 30346
8	Mercedes-Benz U.S. International, Inc.	Edward R. Christian 420 N. 20th Street, Suite 3400 Birmingham, AL 35203	1 Mercedes Drive Vance, AL 35490
9	Mercedes-Benz Vans, LLC	Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	8501 Palmetto Commerce Parkway Ladson, SC 29456

10	Dr. Ing. h.c.F. Porsche AG	Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Stuttgart, Germany
11	Porsche Cars of North America, Inc.	Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	1 Porsche Drive Atlanta, GA 30354
12	Volkswagen AG	Corporation Service Company 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	Wolfsburg, Germany
13	Volkswagen Group of America, Inc.	Corporation Service Company 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	2200 Ferdinand Porsche Drive Herndon, VA 20171

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