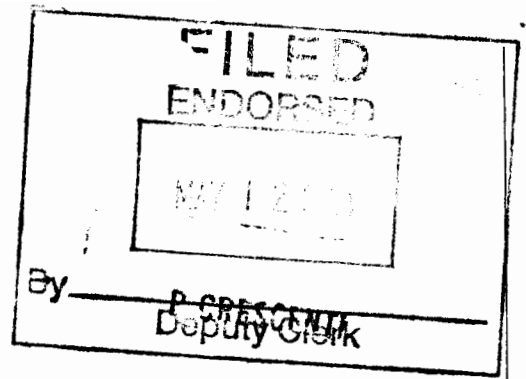


COPY



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CALIFORNIA SUPERIOR COURT  
COUNTY OF SACRAMENTO

01AS01934

CAROLE TREW, on behalf of herself and all  
others similarly situated, and on behalf of the  
general public as a private attorney general,  
  
Plaintiff,  
  
vs.  
  
VOLVO CARS OF NORTH AMERICA, LLC, \_  
and DOES 1-100, inclusive,  
  
Defendants.

No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**  
**1) UNFAIR COMPETITION (BUSINESS & PROFESSIONS CODE SECTION 17200, ET. SEQ.)**  
**2) UNJUST ENRICHMENT**

COMPLAINT

1 Plaintiff, on behalf of herself and all others similarly situated, and for members of the general  
2 public as a private attorney general under California Business and Professions Code section 17204, alleges  
3 on information and belief as follows:

4 **PARTIES**

5  
6 1. Plaintiff Carole Trew is a Sacramento-County resident who leases a 2002 Volvo S60.

7  
8 2. Defendant Volvo Cars of North America, LLC is a foreign corporation, incorporated in the  
9 state of Delaware. Volvo is licensed to, and does, conduct significant business throughout California.

10  
11 3. Plaintiff is unaware of the true names and capacities of Does 1 through 100 and sues them  
12 by fictitious names. Plaintiff will amend this Complaint to include these Doe defendants' true names and  
13 capacities when they are ascertained. Each Doe defendant is responsible in some manner, including  
14 without limitation, as aiders and abettors, for the conduct alleged in this Complaint and for the injuries  
15 suffered by the general public.

16  
17 4. At all times mentioned in this Complaint, each and every defendant was an agent,  
18 representative, or employee of each and every other defendant and in doing the things alleged in this  
19 Complaint, each and every defendant was acting within the course and scope of such agency,  
20 representation or employment and was acting with the consent, permission and authorization of each of the  
21 remaining defendants. Each defendant's actions alleged in this Complaint were ratified and approved by  
22 the other defendants and their respective officers, directors, or managing agents.

23  
24 **GENERAL ALLEGATIONS**

25  
26 5. This case arises from Volvo's violation of California Civil Code section 1795.90 *et. seq.*  
27 (the "California Secret Warranty Law"). The California Secret Warranty Law was enacted to abolish  
28 "secret" vehicle warranties. The term "secret warranty" is used to describe the practice by which an

1 automaker establishes a policy to pay for the repair of that defect without making the defect or the  
2 policy known to the public at large. A secret warranty is usually created when the automaker realizes  
3 that a large number of its customers are experiencing a defect not covered by a factory warranty, and  
4 decides to offer warranty coverage to individual customers only if, for example, the customer complains  
5 about the problem first. The warranty is considered "secret" because all owners are not notified of it.  
6 Instead, the automaker usually issues a service bulletin to its regional offices and/or dealers on how to  
7 deal with the defect. Because owners are kept in the dark about the cost-free repair, the automaker only  
8 has to reimburse those consumers who complain loudly enough; the quiet consumer pays to fix the  
9 defect his or herself.

10  
11 6. Section 1795.92 of the California Secret Warranty Law imposes several duties on  
12 automakers, each of which is designed to do away with secret warranties.

13  
14 7. Specifically, the California Secret Warranty law requires automakers to notify all eligible  
15 owners and lessees ("consumers") by first-class mail, within 90 days of adoption, whenever they enact  
16 "any program or policy that expands or extends the consumer's warranty beyond its stated limit or under  
17 which [the] manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse  
18 consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle  
19 durability, reliability, or performance[.]"

20  
21 8. The California Secret Warranty Law also requires automakers to provide the New  
22 Motor Vehicle Board with a copy of the notice described in paragraph No. 7, so the public can view,  
23 inspect, or copy that notice.

24  
25 9. Additionally, the California Secret Warranty Law requires automakers to advise their  
26 dealers, in writing, of the terms and conditions of any warranty extension, adjustment, or  
27 reimbursement program.

1           10.     The California Secret Warranty Law also requires an automaker to “implement  
2 procedures to assure reimbursement of each consumer eligible under an adjustment program who incurs  
3 expenses for repair of a condition subject to the program prior to acquiring knowledge of the program.”  
4

5           11.     On or about July 2001, Volvo issued a service bulletin that describes a problem with the  
6 electronic throttle module (“ETM”) installed on the following Volvo vehicles: 1999-2000 model-year  
7 S70/V70s, 1999 and later model-year C70s, 1999 and later model-years S80s, and 2001 and later  
8 model-year V70s/S60s (collectively, “Class Vehicles”). In that bulletin, Volvo describes the problem as  
9 follows:

10                   Carbon deposits can form in the throttle module bore on cars frequently driven short  
11 distances. This residue can cause idle speed to become uneven and noticeable to the  
12 driver especially with the increased loads produced by the air conditioned compressor  
13 cycling on and off.

14           12.     The Volvo service bulletin also explains that the defect can be corrected by cleaning the  
15 ETM, describes how to clean the ETM, and states that “[c]aims may be submitted [*i.e.*, a consumer will  
16 receive a free ETM cleaning] under New Car Warranty ONLY one time per vehicle when there is a  
17 documented customer complaint, using claim type 01.”  
18

19           13.     The driveability problem described in the Volvo service bulletin (which the ETM  
20 cleaning is intended to correct) is one that “may substantially affect vehicle durability, reliability, or  
21 performance,” therefore, it falls within the scope of the California Secret Warranty Law.  
22

23           14.     Volvo has taken the position that ETM cleaning is part of a consumer’s “duty” to  
24 maintain his or her vehicle. As a result, Volvo does not typically pay for ETM cleaning under its new  
25 car warranty (or any other warranty). Thus, by extending its new car warranty to cover ETM cleaning,  
26 Volvo has “expand[ed] or extend[ed] the consumer’s warranty beyond its stated limit.” Volvo has also  
27 “offer[ed] to pay for all or any part of the cost of repairing” the ETM problem in Class Vehicles (the  
28

1 “secret ETM cleaning warranty”). Volvo is, therefore, obligated to comply with the provisions of the  
2 California Secret Warranty Law, but has not done so.

3  
4 15. Specifically, Volvo did not notify Plaintiff, or any other owner or lessee of a Class  
5 Vehicle of their right to seek a free ETM cleaning, or to be reimbursed for the cost of cleaning the  
6 ETMs installed in their vehicles.

7  
8 16. Additionally, Volvo did not comply with the dealer-notification provisions of the  
9 California Secret Warranty Law.

10  
11 17. Volvo did not send a copy of its ETM service bulletin to the New Motor Vehicle Board.

12  
13 18. Volvo has also refused to provide the free ETM cleaning to owners of affected vehicles  
14 who have specifically requested it.

15  
16 19. Additionally, Volvo has refused to reimburse consumers who have paid to clean the  
17 ETMs installed in their vehicles.

18  
19 **CLASS ALLEGATIONS**

20  
21 20. Plaintiff brings this class action pursuant to the provisions of Code of Civil Procedure  
22 section 382 on behalf of herself and all other persons similarly situated.

23  
24 21. The class that Plaintiff seeks to represent is defined as all persons residing in California  
25 who meet the following criteria:

26  
27 a. those who currently own or lease a Class Vehicle and did not receive notice of the  
28 secret ETM cleaning warranty as required by the California Secret Warranty Law;

1           b.       those who paid for ETM cleaning while their Class Vehicle was in warranty,  
2 regardless of whether they still own or lease that vehicle.

3  
4           22.       Excluded from the class are the following:

5  
6           a.       Volvo, its subsidiaries and affiliates, officers, directors, and employees;

7  
8           b.       persons who have suffered physical injury; and

9  
10          c.       persons who have settled with and validly released Volvo from separate, non-class  
11 legal actions against Volvo based on the conduct alleged herein;.

12  
13          23.       There are thousands of current and former owners and lessees of Class Vehicles who  
14 reside in California. Those who still own a Class Vehicle are entitled to free repair by Volvo if the ETM  
15 problem should become manifest during the warranty period; and those who have borne the costs relating  
16 to the repair of the problem are entitled to reimbursement of those expenditures, regardless of whether the  
17 vehicle is still under warranty and regardless of whether they still own the vehicle. The class is, therefore,  
18 so numerous and geographically dispersed that joinder of all members in one action is impracticable.

19  
20          24.       Volvo has acted with respect to Plaintiff and the class members in a manner generally  
21 applicable to each of them. There is a well-defined community of interest in the questions of law and fact  
22 involved, which affect all class members. The questions of law and fact common to the class predominate  
23 over the questions that may affect individual class members, including the following:

24  
25           a.       whether Volvo is obligated to inform class members of their right to obtain free  
26 ETM cleaning;

1           b.       whether Volvo is obligated to inform class members of their right to seek  
2 reimbursement for having paid for ETM cleaning;

3  
4           c.       whether Volvo has adequately informed dealers of the secret ETM cleaning  
5 warranty as required by the California Secret Warranty Law; and

6  
7           d.       whether Volvo is required to provide the New Motor Vehicle Board with a copy  
8 of the ETM service bulletin (or the information contained in that bulletin) so that the public can access it;

9  
10          25.       By owning a class vehicle, and having not received notice of the free ETM cleaning,  
11 Plaintiff is asserting claims that are typical of the claims of the entire class.

12  
13          26.       Plaintiff will fairly and adequately represent and protect the interests of the class, and does  
14 not have interests that are antagonistic to or in conflict with those she seeks to represent.

15  
16          27.       Plaintiff has retained counsel who have considerable experience in the prosecution of  
17 class actions and other forms of complex litigation.

18  
19          28.       In view of the complexity of the issues and the expense that an individual plaintiff would  
20 incur if he or she attempted to obtain relief from a large, transnational corporation such as Volvo, the  
21 separate claims of individual class members are monetarily insufficient to support separate actions.  
22 Because of the size of the individual class members' claims, few, if any, class members could afford to  
23 seek legal redress for the wrongs complained of in this Complaint.

24  
25          29.       The class is readily definable, and prosecution as a class action will eliminate the  
26 possibility of repetitious litigation and will provide redress for claims too small to support the expense of  
27 individual, complex litigation. Absent a class action, class members will continue to suffer losses,  
28 Volvo's violations of law will be allowed to proceed without remedy, and Volvo will retain sums received

1 as a result of its wrongdoing. A class action therefore provides a fair and efficient method for adjudicating  
2 this controversy.

3  
4 30. The prosecution of separate claims by individual class members would create a risk of  
5 inconsistent or varying adjudications with respect to thousands of individual class members, which would,  
6 as a practical matter, dispose of the interests of the class members not parties to those separate actions or  
7 would substantially impair or impede their ability to protect their interests and enforce their rights.

8  
9 31. The proposed class satisfies the certification criteria of Code of Civil Procedure section  
10 382, as construed by the courts of this State.

11  
12 **FIRST CAUSE OF ACTION**  
13 **(Violations of the Unfair Competition Law)**  
14

15 32. Plaintiff realleges and incorporates by reference the allegations set forth in each of the  
16 preceding paragraphs of this Complaint.

17  
18 33. By committing the acts and practices alleged in this Complaint, Volvo has engaged in  
19 unlawful business practices in violation of the Unfair Competition Law (the "UCL"), Bus. & Prof. Code  
20 §§ 17200-17209.

21  
22 34. Pursuant to Section 17203 of the UCL, Plaintiff seeks an order of this Court enjoining  
23 Volvo from continuing to engage in unlawful, unfair or fraudulent business practices, and any other act  
24 prohibited by the UCL. Plaintiff also seeks an order requiring Volvo to comply with the terms of the  
25 California Secret Warranty Law by (a) notifying Class Members of the secret ETM cleaning warranty; (b)  
26 providing free ETM cleaning to Class Members, (c) notifying dealers of the facts underlying the ETM  
27 problem and the terms of the secret ETM cleaning warranty, (d) notifying the New Motor Vehicle Board  
28 of the secret ETM cleaning warranty and (e) identifying and reimbursing Class Members who have paid



1 for ETM cleaning. Plaintiff also seeks an order (i) enjoining Volvo from failing and refusing to make full  
2 restitution of all moneys wrongfully obtained and (ii) disgorging all ill-gotten revenues and/or profits  
3 earned or retained as a result of Volvo's violations of the California Secret Warranty Law.

4  
5 **SECOND CAUSE OF ACTION**

6 **(Unjust Enrichment)**

7  
8 35. Plaintiff realleges and incorporates by reference the allegations set forth in each of the  
9 preceding paragraphs of this Complaint.

10  
11 36. As set forth, above, Volvo has violated the California Secret Warranty Law. As a  
12 proximate result of Volvo's conduct, Volvo obtained secret profits by which it became unjustly enriched  
13 at Plaintiff and the Class Members' expense.

14  
15 37. Accordingly, Plaintiff seeks an order establishing Volvo as a constructive trustee of the  
16 secret profits that served to unjustly enrich Volvo, together with interest during the period in which  
17 Volvo has retained such funds, and requiring Volvo to disgorge those funds in a manner to be  
18 determined by the Court.

19  
20 **PRAYER FOR RELIEF**

21  
22 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, and as a private  
23 attorney general under Business & Professions Code section 17204 prays for relief, jointly and severally,  
24 pursuant to each cause of action set forth in this Complaint as follows:

25  
26 1. For an order certifying that the action may be maintained as a class action.  
27  
28

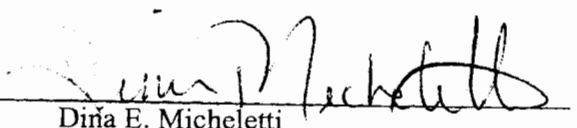
- 1           2.     For an order requiring Volvo to notify Class Members of the secret ETM cleaning  
2 warranty;
- 3
- 4           3.     For an order requiring Volvo to provide free ETM cleaning to Class Members;
- 5
- 6           4.     For an order requiring Volvo to notify dealers of the ETM problem and the terms of the  
7 secret ETM cleaning warranty;
- 8
- 9           5.     For an order requiring Volvo to notify the New Motor Vehicle Board of the secret ETM  
10 cleaning warranty;
- 11
- 12          6.     For an order requiring Volvo to identify and reimburse Class Members who have paid for  
13 ETM cleaning;
- 14
- 15          7.     For an order enjoining Volvo from failing and refusing to make full restitution of all  
16 moneys wrongfully obtained and disgorging all ill-gotten revenues and/or profits earned or retained as a  
17 result of Volvo's violations of the California Secret Warranty Law.
- 18
- 19          8.     For the imposition of an asset freeze and a constructive trust over all moneys unlawfully  
20 obtained through Volvo's unfair, unlawful, fraudulent and deceptive acts and practices, which, if allowed  
21 to be retained, would unjustly enrich Volvo and/or would be dissipated beyond the jurisdiction of this  
22 Court.
- 23
- 24          9.     For an award of attorney fees.
- 25
- 26          10.    For an award of costs.
- 27
- 28          11.    For pre- and post-judgment interest on any amounts awarded.

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12. For such other relief as the Court deems just and proper.

DATED: May 11, 2004

FAZIO & MICHELETTI LLP

By   
Dina E. Micheletti