

Daniel O. Rose, Esq.  
Noah H. Kushlefsky, Esq.  
Kreindler & Kreindler, LLP  
750 Third Avenue  
New York, NY 10017  
Phone: 212-687-8181  
Fax: 212-972-9432  
E-Mail: [drose@kreindler.com](mailto:drose@kreindler.com)  
E-Mail: [nkushlefsky@kreindler.com](mailto:nkushlefsky@kreindler.com)

Anthony Tarricone, Esq.  
Kreindler & Kreindler LLP  
855 Boylston Street  
Boston, MA 02116  
Phone: 617-424-9100  
Fax: 617-424-9120  
E-Mail: [atarricone@kreindler.com](mailto:atarricone@kreindler.com)

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

---

CHARLES ALLEN, CARL BATISTE, GEORGE  
COYNE, ANGELA DOTSON, CHRISTIAN  
DUARTE, DANIEL FLYNN, SHARI JAY, LISA  
JOHNSON, JENNIFER JONES, ROBERT LENKE,  
STEVEN MENDOZA, JORDAN PIPPEN,  
VINCENT POLLOCK, MARCOS RODRIGUES,  
TROY RUDOLPH, DONOVAN SCHWEIGERT,  
TERESA TOLER, AND CONGXIANG ZHA,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,  
VOLKSWAGEN OF AMERICA, INC., AND  
VOLKSWAGEN AKTIENGESELLSCHAFT.

---

Defendants.

NEWARK VICINAGE  
CIVIL ACTION NO.

**CLASS ACTION COMPLAINT  
JURY TRIAL DEMANDED**

## **CLASS ACTION COMPLAINT**

Plaintiffs Charles Allen, Carl Batiste, George Coyne, Angela Dotson, Christian Duarte, Daniel Flynn, Shari Jay, Lisa Johnson, Jennifer Jones, Robert Lenke, Steven Mendoza, Jordan Phippen, Vincent Pollock, Marcos Rodrigues, Troy Rudolph, Donovan Schweigert, Teresa Toler, and Congxiang Zha file this class action complaint on behalf of themselves and all others similarly situated against Defendants Volkswagen Aktiengesellschaft (hereinafter “Volkswagen AG”), Volkswagen Group of America, Inc., and Volkswagen of America, Inc., (hereafter, collectively, “the Volkswagen Defendants” or “Defendants”) and allege as follows:

### **NATURE OF THE CASE**

1. This civil action concerns the Volkswagen Defendants’ intentional installation of “defeat devices” in over 482,000 “clean diesel” Volkswagen and Audi vehicles sold in the United States between 2009 and 2015. The Volkswagen Defendants knowingly used sophisticated software to cheat Environmental Protection Agency (hereafter “EPA”) and state emission testing and make the cars appear to emit far less pollution than they would on the open road. The Volkswagen Defendants marketed the vehicles to the public as environmentally friendly, high performing, and gas efficient. The Volkswagen Defendants sold the vehicles at a premium.

2. Vehicle emissions are regulated by the EPA through the Clean Air Act. This Act aims to protect human health and the environment by reducing emission of nitrogen oxides (NOx) and other pollutants from vehicles. Historically, diesel vehicles in the United States have been unable to meet the stringent requirements of the Clean Air Act’s provisions regarding NOx emissions.

3. Between 2009 and 2015, the Volkswagen Defendants passed EPA emission testing by cheating. Standard emission testing puts the vehicles on a treadmill-like machine. The cars are not tested on an open road. The Volkswagen Defendants installed sophisticated software into the “clean diesel” vehicles that was specifically designed to be able to detect when the vehicle was undergoing official emissions testing by tracking the cars steering and pedal movements. When the software recognized that the car was in testing condition, the installed software would automatically switch on the car’s pollution controls. When the cars returned to open road conditions, these pollution controls would be switched off so that the performance of the vehicle would not be affected.

4. In 2013, an independent group named the International Council on Clean Transportation (hereafter “ICCT”) discovered that in open road conditions the Volkswagen and Audi vehicles were emitting far more NO<sub>x</sub> than found in the official emission testing. The ICCT worked with West Virginia University to do further testing on those vehicles. It was discovered that the Volkswagen Jetta emitted nearly 15 to 35 times as much NO<sub>x</sub> as was the allowable limit under the Clean Air Act, and the Passat model emitted more than 5 to 20 times as much NO<sub>x</sub> as the allowable limit. Upon investigation, the EPA released a statement that some of the cars were emitting 40 times the legally allowable limit.

5. In May 2014, both the EPA and California Air Resources Board (hereafter “CARB”) ordered the Volkswagen Defendants to fix the problem, and The Volkswagen Defendants claimed to have done so.

6. On September 18, 2015, the EPA issued a notice of violation of the Clean Air Act to the Volkswagen Defendants under 42 U.S.C. §§7401-7671. The notice recalled over half a million Volkswagen and Audi vehicles including: Volkswagen Jetta (Model Years 2009 –

2015), Volkswagen Jetta Sportwagen (Model Years 2009-2014), Volkswagen Beetle (Model Years 2012 – 2015) , Volkswagen Beetle Convertible (Model Years 2012-2015), Audi A3 (Model Years 2010 – 2015), Volkswagen Golf (Model Years 2010 – 2015), Volkswagen Golf Sportwagen (MY 2015), and Volkswagen Passat (MY 2012-2015). The EPA and the California Air Resources Board (“CARB”) continues to investigate the Volkswagen Defendants, and more cars and models could potentially be added to the list of defective vehicles (hereinafter, collectively with the above, “Defective Vehicles”).

7. On September 22, 2015, Defendants admitted that the vehicles contained the defeat device. The head of Volkswagen’s U.S. operations, Michael Horn, held a press conference and stated, “Let’s be clear about this, our company was dishonest with the [Environmental Protection Agency] and the California Air Resources Board, and with all of you.” At the same press conference, the Volkswagen Defendants further announced that they would suspend sales of the subject vehicles in the United States until the defeat devices were removed and the vehicles were compliant with federal law. The following day, Volkswagen AG’s CEO, Martin Winterhorn resigned, stating, “I am shocked by the events of the past few days...Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen group.”

8. Volkswagen Group of America has been ordered to recall and repair the defective vehicles so that they comply with the EPA emissions requirements at all times during normal operation. It will be impossible for the Volkswagen Defendants to correct the emissions issue without substantially altering the vehicles’ performance. Even if the vehicles are made EPA compliant, Plaintiffs and Class Members will still suffer actual harm and damages because their vehicles will no longer perform as they did when they were purchased, the value of Plaintiffs and

Class Members' vehicles will be substantially diminished, and Plaintiffs and Class Members are impacted by having had a fraud perpetuated upon them.

9. Plaintiffs bring this action on behalf of themselves and the putative Class Members to recover damages and enjoin Volkswagen from continuing to deceive consumers.

### **PARTIES**

10. Plaintiff Charles Allen is a resident and citizen of Smithfield, North Carolina. Plaintiff Charles Allen purchased a Volkswagen Passat TDI (MY 2014) in August 2014.

11. Plaintiff Carl Batiste is a resident and citizen of Dallas, Georgia. Plaintiff Carl Batiste purchased a Volkswagen Jetta TDI Model Year ("MY") 2014 in July 2015.

12. Plaintiff George Coyne is a resident and citizen of Long Branch, New Jersey. Plaintiff George Coyne purchased a Volkswagen Passat TDI (MY 2014) in 2013.

13. Plaintiff Angela Dotson is a resident and citizen of Oakland, California. Plaintiff Angela Dotson purchased a Volkswagen Jetta TDI Sportwagen (MY 2013) in June 2013

14. Plaintiff Christian Duarte is a resident and citizen of Quartzville, California. Plaintiff Christian Duarte purchased a Volkswagen Golf TDI (MY 2010).

15. Plaintiff Daniel Flynn is a resident and citizen of Ashay, Massachusetts. Plaintiff Daniel Flynn purchased a Volkswagen Passat TDI (MY 2015) on August 12, 2015.

16. Plaintiff Shari Jay is a resident and citizen of Longview, Texas. Plaintiff Shari Jay purchased a Volkswagen Jetta TDI Sportwagen (MY 2009) in July 2009.

17. Plaintiff Lisa Johnson is a resident and citizen of Goleta, California. Plaintiff Lisa Johnson leased a Volkswagen Passat TDI (MY 2015) in September 2015.

18. Plaintiff Jennifer Jones is a resident and citizen of Sugarhill, Georgia. Plaintiff Jennifer Jones purchased a Volkswagen Jetta TDI Sportwagen (MY 2013) in 2013 and a Volkswagen Jetta TDI (MY 2013) in 2013.

19. Plaintiff Robert Lenke is a resident and citizen of Huntington Beach, California. Plaintiff Robert Lenke purchased a Volkswagen Jetta TDI (MY 2013) in May 2013.

20. Plaintiff Steven Mendoza is a resident and citizen of Fort Irwin, California. Plaintiff Steven Mendoza purchased a Volkswagen Jetta TDI (MY 2011) in January 2015.

21. Plaintiff Jordan Phippen is a resident and citizen of Catoosa, Oklahoma. Plaintiff Jordan Phippen purchased a Volkswagen Jetta TDI (MY 2015) in 2015.

22. Plaintiff Vincent Pollock is a resident and citizen of Stoystown, Pennsylvania. Plaintiff Vincent Pollock purchased a Volkswagen Passat TDI (MY 2015) in April 2015.

23. Plaintiff Marcos Rodrigues is a resident and citizen of Coconut Creek, Florida. Plaintiff Marcos Rodrigues purchased a Volkswagen Jetta TDI Sportwagen (MY 2014) in June 2014.

24. Plaintiff Troy Rudolph is a resident and citizen of Enterprise, Alabama. Plaintiff Troy Rudolph purchased a Volkswagen Golf TDI Sportwagen (MY 2015) on August 22, 2015.

25. Plaintiff Donovan Schweigert is a resident and citizen of Apple Valley, California. Plaintiff Donovan Schweigert purchased a Volkswagen Jetta TDI (MY 2011) in 2014.

26. Plaintiff Teresa Toler is a resident and citizen of Coldwater, Mississippi. Plaintiff Teresa Toler purchased a Volkswagen Passat TDI (MY 2014) in 2013.

27. Plaintiff Congxiang (Charles) Zha is a resident and citizen of Katy, Kansas. Plaintiff Congxiang Zha purchased a Volkswagen Jetta TDI (MY 2011) in March 2011.

28. Defendant Volkswagen Group of America is a for-profit corporation conducting business in all 50 states and is organized under the laws of New Jersey. Volkswagen's principal place of business is located at 2200 Ferdinand Porsche Drive, Herndon, Virginia.

29. Defendant Volkswagen of America, Inc. is a corporation which is incorporated in the state of New Jersey. Volkswagen of America, Inc.'s principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia, and is an operating unit of Volkswagen Group of America, Inc.

30. Defendant Volkswagen Aktiengesellschaft (hereafter "Volkswagen AG), doing business as Volkswagen Group and/or Volkswagen AG, is a corporation organized and existing under the laws of Germany, with its principal place of business located in Wolfsburg, German. Volkswagen AG is the parent corporation of Volkswagen Group of America, Inc.

31. Volkswagen Group of America, Volkswagen of America, Inc., and Volkswagen AG (hereinafter, collectively, "Volkswagen Defendants" or "Defendants") and each of them individually and/or collectively are automobile design, manufacturing, distribution and/or service corporations doing business throughout the United States. The Volkswagen Defendants, individually and/or collectively, design, develop, manufacture, market sell, lease, warrant, service, and repair passenger vehicles including the Defective Vehicles.

32. At all times relevant to this case, the Volkswagen Defendants designed, developed, manufactured, marketed, sold, leased, warranted, serviced, and repaired passenger vehicles under the Volkswagen and Audi brands throughout the United States.

### **JURISDICTION AND VENUE**

33. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act ("CAFA") of 2005, 28 U.S.C. §1332 because at least one member of the

Class is a citizen of a state different from that of the Volkswagen Defendants; the proposed class consists of 100 or more members; and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

34. This Court has personal jurisdiction over the Volkswagen Defendants because Defendants Volkswagen Group of America, Inc. and Volkswagen of America, Inc. are incorporated in New Jersey and conduct regular and continuous business in New Jersey.

35. Venue is proper in this district pursuant to 28 U.S.C. 1391 because Defendants Volkswagen Group of America, Inc. and Volkswagen of America, Inc. are incorporated under the laws of New Jersey and a substantial part of the events or omissions giving rise to these claims occurred in this district.

36. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

### **FACTUAL BACKGROUND**

#### **A. The Volkswagen Defendants' National Campaign claims to sell consumers environmentally friendly diesel vehicles without sacrificing mileage or performance**

37. Historically, diesel cars have not been widely marketed in the United States because manufacturers have not been able to produce diesel cars which comply with the strict restrictions of the EPA regarding NOx emissions. Nitrogen oxide is responsible for destroying the ozone layer and contributing to smog, which is often linked to respiratory problems, lung damage, increased risks of cancer, and a weakening of the immune system.

38. In the past, American consumers did not want diesel cars due to their poor mileage and reputation for sluggishness.

39. In 2009, the Volkswagen Defendants introduced their new diesel vehicles in the United States. The Volkswagen Defendants manufactured and sold millions of diesel cars in the United States. Approximately 23% of all cars sold by The Volkswagen Defendants are diesels. The Volkswagen Defendants are the largest seller of diesel passenger vehicles in the United States.

40. The Volkswagen Defendants marketed the diesel cars as “TDI Clean Diesel” vehicles. The fleet included: Volkswagen Jetta (Model Years 2009 – 2015), Volkswagen Jetta Sportwagen (Model Years 2009-2014), Beetle (Model Years 2012 – 2015) , Volkswagen Beetle Convertible (Model Years 2012-2015), Audi A3 (Model Years 2010 – 2015), Golf (Model Years 2010 – 2015), Golf Sportwagen (MY 2015), and Volkswagen Passat (MY 2012-2015). All vehicles were powered by the company’s 2.0 liter turbo diesel four-cylinder engines.



41. The Volkswagen Defendants’ national marketing campaign represented that the defective vehicles were high performing, efficient, and fueled by environmentally friendly “clean

diesel”.<sup>1</sup>



**So efficient, it even sips fuel.**<sup>4</sup>

Our turbocharged engines get high hwy mpg without forfeiting performance.<sup>4</sup>

- **39 hwy mpg for new standard 1.4L TSI® engine**<sup>2</sup>
- 2.0L TDI Clean Diesel engine
- 6-speed DSG® automatic transmission
- **Up to 667 hwy miles per tank with TDI**<sup>5</sup>

○ Available feature   • Standard feature

View key MPG and availability info ?

**This ain't your daddy's diesel.**

Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency.<sup>6</sup> We've ushered in a new era of diesel.

- Engineered to burn low-sulfur diesel fuel
- "Common Rail" direct injection system

View key fuel efficiency info ?



42. The Volkswagen Defendants touted that the Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year, respectively.

<sup>1</sup> Volkswagen commercial advertising campaign, "Diesel, no longer a dirty word", available at <https://www.youtube.com/watch?v=xBKDLJUevrY> and (last visited September 30, 2015); <https://www.youtube.com/watch?v=YPKD-GvUMc8#t=38> and (last visited September 30, 2015) See also Volkswagen commercial advertising fuel economy available at [https://www.youtube.com/watch?v=n1\\_xoASs1k4](https://www.youtube.com/watch?v=n1_xoASs1k4) and (last visited September 30, 2015) ; and Volkswagen commercial advertising vehicle performance available at <https://www.youtube.com/watch?v=zcgqBrzAHJ8> and (last visited September 30, 2015)

43. The Volkswagen Defendants further directed consumers to their website promoting their clean diesel technology, [www.clearlybetterdiesel.org](http://www.clearlybetterdiesel.org). The website buttressed claims made in Volkswagen’s consumer ads, stating “We used to think of diesel as black clouds of smoke and noxious fumes. But that was then. Now we have Clean Diesel that meets the highest standard in all 50 states, thanks to ultra low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.”

44. In regards to its superior fuel efficiency, the Volkswagen Defendants represented that the Defective Vehicles could achieve over 40 miles per gallon of fuel and travel over 800 miles on a tank of fuel.

45. The Volkswagen Defendants also represented that their Defective Vehicles had excellent performance in the areas of torque and acceleration, even with the diesel engine.

46. The Volkswagen Defendants charged a substantial premium for their “clean” and “green” diesel technology. For example, the base MSRP for Jetta SE is \$20,095, while the Clean Diesel TDI SEL carries an MSRP of \$26,410.

47. The Volkswagen Defendants collected premiums across their entire fleet of Defective Vehicles, as set forth in the table below:

<b>Model</b>	<b>Base</b>	<b>Mid-Level</b>	<b>Premium</b>
VW Jetta	\$2,860	\$4,300	\$6,315
VW Beetle	\$4,635	n/a	\$2,640
VW Golf	\$2,950	\$1,000	\$1,000
VW Passat	\$5,755	\$4,750	\$6,855
Audi A3	\$2,805	\$3,095	\$2,925

**B. The Volkswagen Defendants intentionally designed and installed software into the Defective Vehicles to conceal the cars' excessive and illegal pollution emissions.**

48. All passenger vehicles must be certified by the EPA that they meet applicable federal emissions standards under the Clean Air Act.

49. Passenger cars (known as "light-duty motor vehicles" under the CAA) are regulated by the CAA 42 U.S.C. § 7522, which sets compliance provisions, and by 40 C.F.R. Part §86, which sets federal emission standards and test procedures for certain air pollutants such as nitrogen oxides.

50. Every vehicle introduced into interstate commerce in the United States must satisfy applicable emission standards. The EPA administers a certification program and issues certificates of conformity ("COCs") to compliant vehicles. 40 C.F.R. §86.1811-04. Auto manufacturers must submit a COC application to obtain a COC. That application must include a list of all auxiliary emission control devices ("AECDs"), which are design elements that can modulate, delay, or deactivate the operation of any part of the emission control system. Essentially, AECDs can influence or obstruct emission controls. 40 C.F.R. § 86.1803-01.

51. Some AECDs are considered "defeat devices." Defeat devices reduce the effectiveness of the emission control system. 40 C.F.R. § 86.1803-01. A COC applicant must justify each AECD that reduces emission effectiveness and explain why that AECD is not a defeat device. 40 C.F.R. § 86.1844-01(d)(11).

52. Cars with defeat devices cannot be certified. 40 C.F.R. § 86.1848-10(c)(6).

53. The CAA specifically outlaws "defeat devices" and makes it illegal for "any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor

vehicle or motor vehicle engine in compliance with regulations of this subchapter.” CAA §203(a)(3)(B).

54. The emission testing for certification is done in a lab, with the car being tested on a large treadmill-like machine.

**C. The Volkswagen Defendants knowingly put a “defeat device” in the Defective Vehicles.**

55. In 2005, the Volkswagen Defendants began engineering the Defective Vehicles.

56. In 2006, Volkswagen engineers informed the company that a urea solution, known in the car industry as “AdBlue”, would need to be put into the engines to make them compliant with American emission standards. The urea solution helped the vehicles produce less NOx emissions, but it also increased the price per engine. The Volkswagen Defendants determined that they did not want to pay the additional cost per car.

57. During the manufacturing of the Defective Vehicles, Bosch, a software company, provided sophisticate software components that were to be used to regulate the exhaust systems in the vehicles.

58. The Volkswagen Defendants inserted the sophisticated software into their Defective Vehicles. The sophisticated software allowed the cars to track pedal and steering movements. When those movements suggested that the car was undergoing nitrogen-oxide emissions testing, the car automatically turned its pollution control on. With the pollution controls on, the defeat device altered the engine and exhaust systems so emissions standards were met. The rest of the time, the pollution controls switched off automatically, allowing the car to pollute freely.

59. The Volkswagen Defendants had effectively implemented a “defeat device” as defined by the CCA, in all of their TDI engine vehicles.

60. In 2011, Bosch wrote to the Volkswagen Defendants warning that use of the on board software to cheat emission tests was illegal. Similar warnings were reported as early as 2007.

61. In 2013, purely by happenstance, researchers from the International Council on Clean Transportation discovered that there was a significant discrepancy between emissions found in the laboratory tests of the Volkswagen vehicles and their real road performance.

62. Between 2013 and 2014, ICCT worked with researchers at the University of West Virginia to investigate the discrepancy in emissions. The researchers at West Virginia University stuck a probe up the exhaust pipe of The Volkswagen Defendants’ “clean diesel” cars and drove them from San Diego to Seattle.

63. The researchers found that the vehicles were emitting between 10 to 35 times the allowable limit. They brought their findings to the CARB and the EPA in May 2014.

64. During their own investigation, the EPA determined that some of the Defective Vehicles were emitting 40 times the allowable limit.

65. In May 2014, the EPA ordered the Volkswagen Defendants to investigate and fix the problem through a voluntary recall, and The Volkswagen Defendants claimed to have done so.

66. Further emissions testing was done and again the cars performed well in testing but there was still a substantial discrepancy between the lab and road emissions. The Volkswagen Defendants claimed that other technical issues were causing the discrepancy.

According to the EPA, none of the technical issues suggested by the Volkswagen Defendants explained the discrepancy.

67. The EPA and CARB threatened that they would not approve certificates of conformity for the Volkswagen Defendants 2016 model year diesel vehicles until the emissions issue was rectified.

**D. The Volkswagen Defendants admitted that they installed the “defeat device” in the Defective Vehicles.**

68. Subsequently, the Volkswagen Defendants admitted they had designed and installed a defeat device in the Defective Vehicles.

69. On September 18, 2015, the EPA issued a Notice of Violation to the Volkswagen Defendants, finding that The Volkswagen Defendants manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These defeat devices bypassed, defeated, or rendered inoperative elements of the vehicles’ emission control system which existed to comply with CAA emission standards. Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. §7522(a)(3)(B).

70. On September 22, 2015, Michael Horn, the head of Volkswagen Group of America, who is also the head of Volkswagen U.S. operations, held a press conference and stated, “Let’s be clear about this, our company was dishonest with the [Environmental Protection Agency] and the California air resources board, and with all of you.”

71. Also on September 22, 2015, the Volkswagen Defendants further announced that they would suspend sales of the Defective Vehicles in the United States until the defeat devices were removed and the vehicles were compliant with federal law.

72. On September 23, 2015, Volkswagen's CEO, Martin Winterhorn resigned and stated, "I am shocked by the events of the past few days...Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen group."

**E. Volkswagen's Misconduct Has Injured Class Members**

73. The Volkswagen Defendants intentionally violated federal and state law. The Volkswagen Defendants knowingly sold consumers Defective Vehicles that were not "environmentally friendly", but rather produced nitrogen oxide emissions which were 10 to 40 times the legally allowable limit. The Volkswagen Defendants knowingly sold consumers Defective Vehicles which could not provide good performance, mileage, and low emissions all at the same time. The Volkswagen Defendants instituted a national campaign which made false and misleading statements regarding the Defective Vehicles' capabilities. The Volkswagen Defendants knowingly charged a premium for these "clean diesel" vehicles.

74. Plaintiffs and Class Members have been injured by the Volkswagen Defendants' unlawful conduct. First, in light of the EPA recall, Plaintiffs and Class Members will suffer harm from diminution of the quality of their vehicles. Once the vehicles are made EPA compliant, the Defective Vehicles' horsepower, torque, and fuel efficiency will be significantly reduced. Plaintiffs and Class Members vehicles will no longer perform as advertised and warranted.

75. Second, Plaintiffs and Class Members will suffer a diminution in the value of their vehicles once they are made EPA compliant. Plaintiffs and Class Members will have overpaid for their vehicles. They will be forced to pay much more to fuel their less fuel efficient vehicles. The vehicles' lifespans will be diminished as well due to the fact that the average

diesel engine wears out more quickly. Plaintiffs and Class Members will have to resell their vehicles for much less than originally expected, if they can manage to resell them at all.

76. Third, Plaintiffs and Class Members were deceived by Volkswagen, through a national marketing claim promising a superior, efficient “clean” and “green” vehicle. Had Plaintiffs and Class Members known of the defeat device at the time of purchase of the defective vehicles, they would not have purchased or leased the vehicle or paid significantly less than the premium that they did.

## **TOLLING OF THE STATUE OF LIMITATIONS**

### **Fraudulent Concealment**

77. Upon information and belief, the Volkswagen Defendants have known of the defects described above since at least 2009. The Volkswagen Defendants knew of the defects well before Plaintiffs and Class Members purchased the Defective Vehicles, and have concealed from or failed to notify Plaintiffs, Class Members, and the public of the full and complete nature of the defects.

78. The Volkswagen Defendants intentionally concealed the defect from the public, from the Plaintiffs and from the Class until September 2015, and did not fully investigate or consciously failed to investigate the seriousness of the issue.

79. Any applicable statute of limitations has therefore been tolled by the Volkswagen Defendants’ knowledge and active concealment.

### **Estoppel**

80. The Volkswagen Defendants were and are under a continuing duty to disclose to Plaintiffs and Class Members the true character, quality, and nature of the vehicles. They actively concealed the true character, quality, and nature of the vehicles and knowingly made

misrepresentations about the quality, reliability, characteristics, and performance of the vehicles. Plaintiffs and Class Members reasonably relied upon The Volkswagen Defendants' knowing and affirmative misrepresentations and/or active concealment of these facts. Based on the foregoing, The Volkswagen Defendants are estopped from relying on any statutes of limitation in defense of this action.

### **Discovery Rule**

81. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered in September 2015 that their vehicles were defective.

### **CLASS ACTION ALLEGATIONS**

82. Plaintiffs bring this lawsuit as a class action on their own behalf and on behalf of all other persons similarly situated as members of the proposed Class, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

83. The Plaintiffs' and Class Member's claims all derive directly from a single course of conduct by the Volkswagen Defendants. This case is about the responsibility of The Volkswagen Defendants, at law and in equity, for their knowledge, their conduct, and their products. The Volkswagen Defendants have engaged in uniform and standardized conduct toward the Plaintiffs and Class Members. They did not differentiate, in degree of care or candor, their actions or inactions, or in the content of their statements or omissions, among individual Class Members. The objective facts on these subjects are the same for all Class Members. Within each Claim for Relief asserted by the respective Classes, the same legal standards govern.

Additionally, many states share the same legal standards and elements of proof, facilitating the certification of multistate classes for some or all claims.

84. Plaintiffs are not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 of the Federal Rules of Civil Procedure provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, certify nationwide, statewide and/or multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subclasses.

85. Plaintiffs bring this action and seeks to certify and maintain it as a class action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure on their behalf and on behalf of a Nationwide Class (the “Nationwide Class”) defined as follows: All persons or entities in the United States who purchased or leased one or more Defective Vehicles in the United States.

86. Plaintiffs seek to represent the following statewide class or subclasses defined as follows:

- a. Plaintiff George Coyne seeks to represent the New Jersey Subclass, defined as all persons in the State of New Jersey who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.

- b. Plaintiff Charles Allen seeks to represent the North Carolina Subclass, defined as all persons in the State of North Carolina who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- c. Plaintiffs Angela Dotson, Christian Duarte, Lisa Johnson, Robert Lenke, Steven Mendoza, and Donovan Schweigert seek to represent the California Subclass, defined as all persons in the State of California who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- d. Plaintiffs Carl Batiste and Jennifer Jones seek to represent the Georgia Subclass, defined as all persons in the State of Georgia who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- e. Plaintiff Daniel Flynn seeks to represent the Massachusetts Subclass, defined as all persons in the State of Massachusetts who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- f. Plaintiff Shari Jay seeks to represent the Texas Subclass, defined as all persons in the State of Texas who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- g. Plaintiff Jordan Phippen seeks to represent the Oklahoma Subclass, defined as all persons in the State of Oklahoma who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- h. Plaintiff Vincent Pollock seeks to represent the Pennsylvania Subclass, defined as all persons in the State of Pennsylvania who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.

- i. Plaintiff Marcos Rodrigues seeks to represent the Florida Subclass, defined as all persons in the State of Florida who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- j. Plaintiff Troy Rudolph seeks to represent the Alabama Subclass, defined as all persons in the State of Alabama who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- k. Plaintiff Teresa Toler seeks to represent the Mississippi Subclass, defined as all persons in the State of Mississippi who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.
- l. Plaintiff Congxiang Zha seeks to represent the Kansas Subclass, defined as all persons in the State of Kansas who purchased or leased one or more Defective Vehicles (see ¶6, p. 3) in the United States.

87. Excluded from the Classes are: (1) The Volkswagen Defendants, any entity or division in which The Volkswagen Defendants have a controlling interest, and their legal representatives, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates; (2) the Judge to whom this case is assigned and the Judge's staff; (3) governmental entities; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses, or modified in any other way.

#### **Numerosity and Ascertainability**

88. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). Plaintiffs are informed and believe that there are nearly 500,000 Defective Vehicles nationwide, and thousands

of Defective Vehicles in each of the States. Individual joinder of all Class Members is impracticable.

89. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court.

90. Each of the Classes is ascertainable because its members can be readily identified using title records, registration records, sales records, production records, and other information kept by Plaintiffs, The Volkswagen Defendants and/or third parties in the usual course of business, and within their control.

#### **Typicality**

91. Plaintiffs' claims are typical of the claims of Class Members, and arise from the same course of conduct by the Volkswagen Defendants. The representative Plaintiffs, like all Class Members, have been damaged by The Volkswagen Defendants' misconduct in that they have incurred losses relating to the defeat devices and The Volkswagen Defendants' misrepresentations and concealments. Furthermore, the factual bases of The Volkswagen Defendants' misconduct are common to all Class Members and represent a common thread of misconduct resulting in injury to all Class Members. The relief Plaintiffs seek is typical of the relief sought for the absent Class Members.

#### **Adequacy of Representation**

92. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective products.

93. Plaintiffs' counsel are committed to vigorously prosecuting this action on behalf of the Classes, and have the financial resources to do so. Neither Plaintiffs nor counsel have interests adverse to those of the Classes.

**Predominance of Common Issues**

94. There are numerous questions of law and fact common to Plaintiffs that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include the following:

- a. Whether the Defective Vehicles contain illegal defeat devices;
- b. Whether the defeat devices cause excessive and illegal emissions.
- c. Whether the Volkswagen Defendants engaged in unlawful, unfair or deceptive business practices, as alleged herein;
- d. Whether the Defective Vehicles suffered a diminution of value as a result of The Volkswagen Defendants' deceptive business practices;
- e. Whether the Volkswagen Defendants made unlawful and misleading representations or material omissions with respect to the Defective Vehicles;
- f. Whether the Volkswagen Defendants represented that the Defective Vehicles have characteristics, uses, benefits or qualities that they do not have;
- g. Whether the Volkswagen Defendants' unlawful, unfair and deceptive practices harmed Plaintiffs and Class Members;
- h. Whether Plaintiffs and Class Members have been damaged by the unlawful actions of The Volkswagen Defendants and the amount of damages to the Class;

- i. Whether the Volkswagen Defendants have been unjustly enriched by their conduct;
- j. Whether Plaintiffs and Class Members are entitled to equitable relief;
- k. Whether punitive damages should be awarded; and
- l. What aggregate amounts of statutory penalties are sufficient to punish and deter the Volkswagen Defendants and to vindicate statutory and public policy.

**Superiority**

95. Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of the Volkswagen Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

96. The prosecution of separate actions by the individual Class Members on the claims asserted herein would create a risk of inconsistent or varying adjudications for individual Class Members, which would establish incompatible standards of conduct for the Volkswagen Defendants; and because adjudication with respect to individual Class Members would, as a practical matter, be dispositive of the interests of other Class Members, or impair substantially or impede their ability to protect their interests.

97. Absent a class action, most Class Members would likely find the cost of litigating their individual claims prohibitively high and would therefore have no effective remedy at law. Because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class Members to redress the wrongs done to each of them individually, such that most or all class members would have no rational economic interest in individually controlling

the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Fed. R. Civ. P. 23(b)(3)(A). Absent a class action, Class Members will continue to incur damages, and the Volkswagen Defendants' misconduct will continue without remedy.

98. Classwide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because the Volkswagen Defendants have acted on grounds that apply generally to the Class, and inconsistent adjudications with respect to the Volkswagen Defendants' liability would establish incompatible standards and substantially impair or impede the ability of Class Members to protect their interests. Classwide relief assures fair, consistent, and equitable treatment and protection of all Class Members, and uniformity and consistency in the Volkswagen Defendants' discharge of their duties to perform corrective action regarding the Defective Vehicles.

99. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The common questions of law and of fact regarding the Volkswagen Defendants' conduct and responsibility predominate over any questions affecting only individual Class Members.

100. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the court, and the public of

class treatment in this court, making class adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).

**COUNT I**  
**VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT**  
**(On behalf of the Nationwide Class, or alternatively the New Jersey Subclass)**

101. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

102. The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*, prohibits the “use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation . . . in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby.” N.J.S.A 56:8-2.

103. The Volkswagen Defendants have engaged in, and continue to engage in, unconscionable commercial practices, deceptive acts and misrepresentations in the conduct of its trade and/or commerce in the State of New Jersey. The Volkswagen Defendants had a scheme to defraud Plaintiffs as well as state and federal regulators by installing a defeat device on the Defective Vehicles that would show they were compliant with U.S. emission standards and then representing to the consumers that its Defective Vehicles were “Clean Diesel” with low emissions and high fuel efficiency and worth the premium prices they charged.

104. The Volkswagen Defendants made numerous material misrepresentations in their television, print, and internet advertising. The Volkswagen Defendants knew, however, that the defeat device software they had installed was cheating the emission testing and that their Defective Vehicles were not “Clean Diesel” as advertised but instead were emitting up to forty

times more of NOx than was legally allowed. Further, the Volkswagen Defendants knew, or should have known, that the Defective Vehicles could not achieve the advertised fuel efficiency had they been legally compliant with the emission standards.

105. The NJCFA further provides that “[a]ny person who suffers an ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person any method, act, or practice declared unlawful under the [NJCFA] may bring an action or assert a counterclaim therefore in any court of competent jurisdiction. N.J.S.A. 56:9-19.

106. Plaintiffs and Class Members are “person(s)” as that term is defined in N.J.S.A.56:8-1(d).

107. Plaintiffs and Class Members have suffered an ascertainable loss of moneys or property as a direct and proximate result of the Volkswagen Defendants’ unfair and unconscionable practices. The Volkswagen Defendants charged a premium price for the Defective Vehicles due to their low emissions and high fuel efficiency. Thus, as part of the scheme by the Volkswagen Defendants, Plaintiffs and the Class Members paid more than they would have, had they known of Defendants’ deception and will have incurred additional costs, including fuel costs as a result of Defendants’ unlawful conduct. As a result, of the unlawful conduct by the Volkswagen Defendants, the Defective Vehicles have been diminished in value rendering them virtually worthless.

108. Plaintiffs and Class Members have a private right of action against the Volkswagen Defendants that entitles them to recover, in addition to their actual damages, a threefold award of the damages sustained by any person, interest, as well as an award of reasonable attorney’s fees, filing fees and reasonable costs of the suit. N.J.S.A 56:8-19.

109. As a direct and proximate result of the Volkswagen Defendants' unlawful, unfair, and fraudulent business practices, Plaintiffs and Class Members have suffered injury in fact and lost money or property, in that they bought or leased Defective Vehicles they otherwise could not or would not have, overpaid for their vehicles, did not receive the benefit of their bargain, and their Defective Vehicles suffered a diminution in value. In addition, Plaintiffs and Class Members will incur additional fuel costs, and a diminution in the performance of their respective Defective Vehicles, if and when their Defective Vehicles are altered in order to bring them into compliance with federal and state emissions standards. Meanwhile, the Volkswagen Defendants have sold or leased more Defective Vehicles than they otherwise could have and charged inflated prices for Defective Vehicles, thereby unjustly enriching itself.

110. Plaintiffs and Class Members relied upon the fraudulent statements in the marketing materials to their detriment and have suffered and will continue to suffer irreparable harm if the Volkswagen Defendants continue to engage in such deceptive, unfair, and unreasonable practices.

111. Plaintiffs and Class Members demand judgment against the Volkswagen Defendants for compensatory damages, treble damages, pre- and post-judgment interest, attorneys' fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

**COUNT II**  
**FRAUD BY CONCEALMENT**  
**(On behalf of Nationwide Class)**

112. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

113. The Volkswagen Defendants intentionally concealed and suppressed material facts concerning the quality of the Defective Vehicles' emission standards. As alleged in this complaint, notwithstanding its deceptive marketing campaign related to the "Clean Diesel" vehicles, the Volkswagen Defendants engaged in a secret scheme to evade federal and state vehicle emissions standards by installing defeat device software designed to conceal its vehicles' emissions of NOx. The defeat device software was purposefully designed to "switch" on during the EPA or other emission testing, such that the Defective Vehicles would show far lower emissions during testing than when actually being operated by a consumer.

114. The Volkswagen Defendants' deliberate scheme to cheat the testing resulted in toxic emissions of NOx up to forty times the allowed standards. It also allowed the Volkswagen Defendants to make material misrepresentations about its environmentally "clean" vehicles and their fuel efficiency – all the while also allowing the Volkswagen Defendants to charge a premium price for the Defective Vehicles.

115. Even after the EPA gave the Volkswagen Defendants the opportunity to fix the emissions problem through a voluntary recall, the Volkswagen Defendants continued to utilize the defeat device during emissions testing while marketing and selling the Defective Vehicles as "environmentally friendly."

116. The Volkswagen Defendants had a duty to disclose the scheme and the existence of the defeat device because they consistently and aggressively marketed and made affirmative representations to all consumers regarding its "Clean Diesel" technology that purported to pass all applicable federal and state emission standards. The existence of the defeat device was known or accessible only to the Volkswagen Defendants, who had superior knowledge and access to the facts, and the Volkswagen Defendants knew that the facts were not known to or

reasonably discoverable by Plaintiffs and Class Members. These omitted and concealed facts were material because they directly impact the quality of the Defective Vehicles.

117. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. The Volkswagen Defendants represented to Plaintiffs and Class Members that they were purchasing *clean* diesel vehicles, and certification testing appeared to confirm this—except that the Volkswagen Defendants had secretly subverted the testing process through the use of its defeat device.

118. The Volkswagen Defendants actively concealed or suppressed these material facts, in whole or in part, to induce Plaintiffs and Class Members to purchase or lease the Defective Vehicles at high prices because of their desire to protect the environment through low emissions and higher fuel efficiency. The Volkswagen Defendants also actively concealed the material facts to protect its profits because they could charge a premium price for the Defective Vehicles – anywhere from \$1,000 to \$7,000 more than for gasoline vehicles of the same make and model. The Volkswagen Defendants did so at the expense of Plaintiffs and Class Members.

119. Plaintiffs and Class Members were unaware of these omitted material facts and would not have acted as they did had they known of the concealed or suppressed facts. The actions of Plaintiffs and Class Members were reasonable and justified. The Volkswagen Defendants were in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or Class Members.

120. Because of the concealment and/or suppression of the facts, Plaintiffs and Class Members have sustained damage because they own Defective Vehicles that are diminished in

value as a result of the Volkswagen Defendants' concealment of and failure to timely disclose the true quality and quantity of those vehicles' emissions and the serious issues engendered by the Volkswagen Defendants' corporate policies. Had Plaintiffs and Class Members been aware of the Volkswagen Defendants' emissions schemes with regard to the Defective Vehicles, and the company's callous disregard for compliance with applicable federal and state law and regulations, Plaintiffs and Class Members who purchased or leased the Defective Vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

121. The Volkswagen Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being to enrich the Volkswagen Defendants. The Volkswagen Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

**COUNT III**  
**FRAUDULENT INDUCEMENT**  
**(On behalf of Nationwide Class)**

122. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

123. The Volkswagen Defendants affirmatively misrepresented and/or did not disclose sufficient facts to render non-misleading its statements about the emissions certification, efficiency, and performance characteristics of the Defective Vehicles. These misrepresentations or omissions include, inter alia, whether the Defective Vehicles truly passed federal emissions requirements (they did not), or possessed the efficiency and performance characteristics advertised (they did not).

124. The Volkswagen Defendants knew, or reasonably should have known, that their representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. The Volkswagen Defendants also knew, or had reason to know, that their misrepresentations and omissions would induce Class Members to purchase or lease Defective Vehicles.

125. The Volkswagen Defendants' misrepresentations or omissions were material and a substantial factor in Plaintiffs' and Class Members' purchasing or leasing Defective Vehicles.

126. The Volkswagen Defendants intended for their misrepresentations or omissions to induce Plaintiffs and Class Members to purchase or lease Defective Vehicles, or had reckless disregard for same.

127. But for these misrepresentations (or omissions), Plaintiffs and Class Members would not have purchased or leased Defective Vehicles, and/or would have purchased or leased them at cheaper prices.

128. Plaintiffs and Class Members were justified in relying on the Volkswagen Defendants' misrepresentations. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each Class member, including through promotional materials prepared and disseminated by Volkswagen. To the extent applicable, reliance can be presumed in these circumstances.

129. Plaintiffs and Class Members were damaged by reason of the Volkswagen Defendants' misrepresentations or omissions alleged herein.

**COUNT IV**  
**COMMON LAW FRAUD**  
**(On behalf of Nationwide Class)**

130. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

131. Upon information and belief the Volkswagen Defendants committed other material and intentional fraudulent acts, misrepresentations and omissions concerning the true nature of the Defective Vehicles including the fact that they contained emissions defeat devices, which resulted in the Defective Vehicles being environmentally unfriendly, lacking the represented performance, and having substantially reduced value.

132. Upon information and belief these acts, omissions and statements were made by the Volkswagen Defendants with knowledge of their falsity, and with the intent that Plaintiffs and Class Members rely on them.

133. Plaintiffs and Class Members reasonably relied on these acts, statements and omissions, and suffered damages as a result.

**COUNT V**  
**NEGLIGENT MISREPRESENTATION AND OMISSION**  
**(On behalf of Nationwide Class)**

134. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

135. The Volkswagen Defendants had or undertook a duty to accurately and truthfully represent to consumers the truth regarding the Volkswagen Defendants' statements about the Defective Vehicles' emissions certifications, efficiency, and performance characteristics.

136. The Volkswagen Defendants failed to exercise ordinary care in making representations concerning the Defective Vehicles' certifiability, efficiency, and performance characteristics.

137. The Volkswagen Defendants negligently misrepresented or omitted the Defective Vehicle's true certifiability, efficiency, and performance characteristics.

138. The Volkswagen Defendants' statements were false at the time the misrepresentations were made (or the omissions were not made).

139. The Volkswagen Defendants knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. The Volkswagen Defendants also knew, or had reason to know, that its misrepresentations and omissions would induce Plaintiffs and Class Members to purchase or lease Defective Vehicles.

140. As a direct and proximate result of the Volkswagen Defendants' acts and omissions described herein, Plaintiffs and Class Members have suffered harm, and will continue to do so.

141. The Volkswagen Defendants' misrepresentations or omissions were material and a substantial factor in Plaintiffs' and Class Members' purchasing or leasing Defective Vehicles.

142. But for these misrepresentations (or omissions), Plaintiffs and Class Members would not have purchased or leased Defective Vehicles, and/or would have purchased or leased them at cheaper prices.

143. Plaintiffs and Class Members were justified in relying on the Volkswagen Defendants' misrepresentations. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to

each Class member, including through promotional materials prepared and disseminated by the Volkswagen Defendants. To the extent applicable, reliance can be presumed in these circumstances.

144. Plaintiffs and Class Members were damaged by reason of the Volkswagen Defendants' misrepresentations or omissions alleged herein.

**COUNT VI**  
**BREACH OF CONTRACT**  
**(On behalf of Nationwide Class)**

145. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

146. Each and every sale or lease of a Defective Vehicle constitutes a contract between the Volkswagen Defendants and the purchaser or lessee. These sale or lease agreements are standardized forms prepared by the Volkswagen Defendants, do not vary, or do not substantially vary in pertinent materials respects, and are thrust upon Class Members by the Volkswagen Defendants and thus constitute contracts of adhesion.

147. Upon information and belief, the Volkswagen Defendants' sales and lease agreements provide that the Defective Vehicles being sold or leased comply with related warranties, including those concerning CAA and EPA regulatory compliance.

148. The Volkswagen Defendants materially breached these contracts by, inter alia, selling or leasing Plaintiffs and Class Members defective or non-conforming vehicles and by misrepresenting or failing to disclose the existence of the defeat device and/or defective design, including information known to the Volkswagen Defendants rendering each Defective Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with "Clean Diesel" engine systems and defeat devices.

149. Plaintiffs and Class Members are entitled to recover all damages proximately caused by the Volkswagen Defendants' breach, including compensatory, incidental, and consequential damages, and pre- and post-judgment interest. Damages may be quantified on a classwide basis. Also, or in the alternative, Plaintiffs and Class Members are entitled to restitution, disgorgement, rescission, and similar equitable relief. Any provisions in the sales and lease agreements to the contrary are unconscionable, severable, voidable, and/or void.

150. Further, by common law or statute, the sales and lease agreements impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

151. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

152. The Volkswagen Defendants breached not only the sales and lease agreements but the covenant of good faith and fair dealing in those agreements through its wrongful actions alleged herein.

153. Plaintiffs and Class Members have sustained damages as a result of the Volkswagen Defendants' breach of the sales and lease agreements and the covenant of good faith and fair dealing under each sales and lease agreement.

154. The Volkswagen Defendants' fraud as alleged herein amounts to an illusory promise rendering any agreement unenforceable, unconscionable, void, and/or voidable.

**COUNT VII**  
**VIOLATION OF UNIFORM COMMERCIAL CODE §2-313**  
**BREACH OF EXPRESS WARRANTY**  
**(On behalf of Nationwide Class)**

155. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

156. The Volkswagen Defendants made numerous representations, descriptions, and promises to Plaintiffs and Class Members regarding the performance and emission controls of the Defective Vehicles.

157. The Volkswagen Defendants, however, knew or should have known that their representations, descriptions, and promises were false. The Volkswagen Defendants were aware that they had installed defeat devices in the vehicles they sold to Plaintiffs and other Class Members.

158. Plaintiffs and other Class Members reasonably relied on the Volkswagen Defendants' representations in purchasing or leasing "clean" diesel vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiffs and other Class Members, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, the Volkswagen Defendants breached their express warranty by providing a product containing

defects that were never disclosed to the Plaintiffs and Class Members, as well as warranting the certifiability of the Defective Vehicles under CAA and EPA emissions standards.

159. As a direct and proximate result of the Volkswagen Defendants' false and misleading representations and warranties, Plaintiffs and other Class Members suffered significant damages.

**COUNT VIII**  
**VIOLATION OF UNIFORM COMMERCIAL CODE §§2-314 AND 2- 315**  
**BREACH OF IMPLIED WARRANTY**  
**(On behalf of Nationwide Class)**

160. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

161. The Volkswagen Defendants impliedly warranted that the Defective Vehicles were of merchantable quality, fit for their intended or ordinary purpose, and/or were compliant with CAA and EPA emissions standards.

162. The Defective Vehicles failed to conform to the Volkswagen Defendants' implied warranty regarding their functionality as alleged herein, including but not limited to the vehicles' certifiability, efficiency, performance and value.

163. As a direct and proximate result of the Volkswagen Defendants' false and misleading representations and warranties, Plaintiffs and other Class Members suffered significant injury when the Volkswagen Defendants sold them vehicles that, it is now clear, are worth far less than the price Plaintiffs and other Class Members paid for them and are not compliant with the law.

**COUNT IX**  
**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**  
**(“Magnuson-Moss”), 15 U.S.C. § 2301, et seq.**  
**(On behalf of Nationwide Class)**

164. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

165. Magnuson-Moss provides a private right of action by purchasers of consumer products against manufacturers or retailers who, among other things, fail to comply with the terms of the written, express, or implied warranties. See 15 U.S.C. § 2310(d)(1) (Remedies in consumer disputes). As alleged above, the Volkswagen Defendants have failed to comply with the terms of their written, express, or implied warranties.

166. The Defective Vehicles are “consumer products” as defined by Magnuson-Moss. See 15 U.S.C. § 2301(1).

167. Plaintiffs and Class Members are “consumers” as defined by Magnuson-Moss. See 15 U.S.C. § 2301(3).

168. The Volkswagen Defendants are “suppliers” and/or “warrantors” as defined by Magnuson-Moss. See 15 U.S.C. § 2301(4)-(5).

169. As suppliers and/or warrantors, the Volkswagen Defendants are obligated to afford Plaintiffs and Class Members, as consumers, all rights and remedies available under Magnuson-Moss, regardless of privity.

170. Magnuson-Moss provides a cause of action for, among other things, breach of a warranty. See 15 U.S.C. § 2310(d)(1). The Volkswagen Defendants breached their implied warranties of merchantability, which cannot be disclaimed under Magnuson-Moss, see 15 U.S.C. § 2308(a)(1), by failing to provide merchantable goods. Plaintiffs and Class Members have

suffered damages as a result of the Volkswagen Defendants' breaches of warranties as set forth above.

171. Further, the Volkswagen Defendants provided the purchasers and lessees of Defective Vehicles multiple written warranties as defined by 15 U.S.C. § 2301(6).

172. ***Manufacturer's Warranty.*** The Volkswagen Defendants provided Plaintiffs and each Class Member who purchased or leased a Defective Vehicle with a Manufacturer's Warranty, which provides "bumper-to-bumper" limited express warranty coverage for a minimum of 3 years or 36,000 miles, whichever comes first. This warranty covers emissions related repairs. This warranty is directly applicable to the Defective Vehicles.

173. As required by law, the Volkswagen Defendants also provided a Federal Emissions Warranty to Class Members.

174. ***Federal Emissions Warranty.*** Consistent with federal law, the Volkswagen Defendants provided Plaintiffs and the proposed Nationwide Class with a "performance warranty" and a "design and defect warranty." In the event that a vehicle fails an emissions test, these warranties cover all emissions related parts for 2 years or 24,000 miles (whichever comes first), with the catalytic converter, engine control unit, and onboard diagnostic device covered for 8 years or 80,000 miles (whichever comes first). These warranties are directly applicable to the Defective Vehicles.

175. The Volkswagen Defendants breached these warranties by selling the Defective Vehicles with a defeat device which renders the emissions control systems defective, and the Defective Vehicles thus do not comply with emissions standards set by federal law. This device cannot be repaired or redressed without materially altering the advertised estimated fuel economy and other performance characteristics of the vehicle.

176. The Volkswagen Defendants' breach of warranties has deprived Plaintiffs and other Class Members of the benefit of their bargain. The amount in controversy of the Plaintiffs' 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 class action suit.

177. Plaintiffs and Class Members have suffered, and are entitled to recover, damages as a result of the Volkswagen Defendants' breaches of warranty and violations of Magnuson-Moss.

178. The Volkswagen Defendants had an opportunity to disclose information concerning the Defective Vehicle's inability to perform as warranted, and to cure its breach of warranties, at least since May 2014, in response to the West Virginia study and in response to inquiries by the EPA and CARB, and yet they failed to do so.

179. As a direct and proximate result of the Volkswagen Defendants' conduct, Plaintiffs and Class Members have suffered damages and continue to suffer damages, including economic damages at the point of sale or lease, that is, the difference between the value of the vehicle as promised and the value of the vehicle as delivered.

180. Additionally, or in the alternative, Magnuson-Moss provides for "other legal and equitable" relief where there has been a breach of warranty or failure to abide by other obligations imposed by Magnuson-Moss. See 15 U.S.C. § 2310(d)(1). Rescission and Revocation of Acceptance are equitable remedies available to Plaintiffs and Class Members under Magnuson-Moss.

181. Plaintiffs and Class Members also seek under Magnuson-Moss an award of costs and expenses, including attorneys' fees, to prevailing consumers in connection with the

commencement and prosecution of this action. See 15 U.S.C. § 2310(d)(2). Plaintiffs and Class Members intend to seek such an award, including expert witness costs and other recoverable costs, as prevailing consumers at the conclusion of this lawsuit.

**COUNT X**  
**UNJUST ENRICHMENT**  
**(On behalf of the Nationwide Class)**

182. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

183. Plaintiffs and Class Members directly conferred benefits on the Volkswagen Defendants. Specifically, the Volkswagen Defendants received from Plaintiffs and Class Members, benefits in the form of a premium price for the Defective Vehicles – typically \$1,000 to \$7,000 more the same make and model gasoline vehicle.

184. Plaintiffs and Class Members paid this premium price because of the Volkswagen Defendants' representations that the Defective Vehicles complied with all applicable emissions standards and had greater fuel efficiency. Plaintiffs and Class Members would not have paid for the Defective Vehicles or would have paid less if not for these representations.

185. The Volkswagen Defendants knew these representations to be false due to their purposeful installation of the defeat device, but knowingly accepted and retained the premium prices for the Defective Vehicles.

186. As a result, Plaintiffs and Class Members have conferred a direct benefit on the Volkswagen Defendants.

187. Plaintiffs and Class Members expected remuneration or would have expected remuneration had they known the true facts surrounding the Volkswagen Defendants' conduct.

For example, had Plaintiffs and Class Members known that the Defective Vehicles did not meet the emission standards and that the fuel efficiency and performance would be downgraded once the vehicle is fixed, they would not have purchased the Defective Vehicles or would have expected to be charged and/or would have only agreed to pay significantly less for the Defective Vehicles.

188. The Volkswagen Defendants had knowledge of this benefit and voluntarily accepted and retained the benefit conferred on them.

189. The Volkswagen Defendants will be unjustly enriched if they are allowed to retain the aforementioned benefits, and the Plaintiffs and Class Members are entitled to recover the amount by which the Volkswagen Defendants were unjustly enriched at their expense.

**COUNT XI**  
**FALSE ADVERTISING UNDER SECTION 43(a) OF THE LANHAM ACT,**  
**15 U.S.C. § 1125(a)**  
**(On behalf of Nationwide Class)**

190. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

191. The Volkswagen Defendants violated the Lanham Act through their advertisement campaign which included statements, advertisements and promotional activities described herein that were false and misleading in material respects, including, inter alia, the operation of the vehicle in compliance with applicable state and/or federal requirements, in an environmentally “friendly” manner and in a fuel efficient manner, and further with respect to the level of performance of the defective vehicle when operated in the ordinary course of compliance with applicable state and/or federal requirements, in an environmentally “friendly” manner and in a fuel-efficient manner.

192. Plaintiffs and Class Members were injured and continue to be injured as a result of the false and misleading advertisement.

**COUNT XII**

**Violation of the California Consumers Legal Remedies Act (Cal. Civ. Code § 1750 et seq.)  
(On behalf of the California Subclass)**

193. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

194. Plaintiffs bring this count on behalf of themselves and the members of the California Subclass. (*See* ¶86, pp. 20-22.)

195. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civil Code § 1750 et seq. (the “CLRA”). Plaintiffs and Class Members are consumers as defined by California Civil Code § 1761(d). The Defective Vehicles are goods within the meaning of the CLRA.

196. The Volkswagen Defendants violated the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a)(5), (7), (9), and (16) of the CLRA in transactions that were intended to result in, and did result in, the sale of the Defective Vehicles:

- a) representing that the Defective Vehicles have characteristics, uses, or benefits, which they do not have;
- (b) representing that the Defective Vehicles are of a particular standard, quality, or grade if they are of another;
- (c) advertising the Defective Vehicles with intent not to sell them as advertised; and
- (d) representing that the Defective Vehicles have been supplied in accordance with previous representations when they have not.

197. The Volkswagen Defendants violated the CLRA by representing and failing to disclose through its advertisements the Defective Vehicles as described above when they knew, or should have known, that the representations and advertisements were false and misleading.

198. Pursuant to California Civil Code § 1782(d), Plaintiffs, individually and on behalf of the other Class Members, seek a Court order enjoining the above-described wrongful acts and practices of the Volkswagen Defendants and for restitution and disgorgement.

199. Pursuant to § 1782 of the CLRA, by letter dated October 2, 2015, Plaintiffs notified the Volkswagen Defendants in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded that the Volkswagen Defendants rectify the problems associated with the actions detailed above and give notice to all Defective Vehicle consumers of the Volkswagen Defendants' intent to so act. A copy of the letter is attached hereto as Exhibit A. If the Volkswagen Defendants fail to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all Defective Vehicle consumers within 30 days of the date of written notice pursuant to § 1782 of the CLRA, Plaintiffs will amend this complaint to add claims for damages, as appropriate.

200. The Volkswagen Defendants' conduct is malicious, fraudulent and wanton.

201. Pursuant to § 1780(d) of the Act, attached hereto as Exhibit B is the affidavit showing that this action has been commenced in the proper forum.

### **COUNT XIII**

#### **Violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.) (On behalf of the California Subclass)**

202. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

203. Plaintiffs bring this count on behalf of themselves and the members of the California Subclass. (*See* ¶86, pp. 20-22.)

204. As alleged herein, Plaintiffs and Class Members have suffered injury in fact and lost money or property as a result of the Volkswagen Defendants' conduct because they purchased Defective Vehicles that were falsely advertised.

205. The Unfair Competition Law, Business & Professions Code § 17200, et seq. ("UCL") prohibits any "unlawful," "fraudulent," or "unfair" business act or practice and any false or misleading advertising. In the course of conducting business, the Volkswagen Defendants committed unlawful business practices by, inter alia, misrepresenting and/or omitting material facts concerning the emissions of the Defective Vehicles, making representations (which also constitute advertising within the meaning of § 17200 and § 17500) as set forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) under the CLRA, Business & Professions Code §§ 17200, et seq., 17500, et seq., and the common law, including breach of implied warranty. The Volkswagen Defendants' above-described wrongful acts and practices constitute actual and constructive fraud within the meaning of Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil Code §§ 1709 and 1711.

206. Plaintiffs and Class Members reserve the right to allege other violations of law, which constitute other unlawful business acts or practices.

207. In the course of conducting business, the Volkswagen Defendants committed "unfair" business practices by, among other things, making the representations (which also constitute advertising within the meaning of §17200) and omissions of material facts regarding the emissions of the Defective Vehicles, as set forth more fully herein. There is no societal

benefit from false advertising – only harm. While Plaintiffs and the other Class Members were harmed, the Volkswagen Defendants were unjustly enriched by their false misrepresentations and omissions. As a result, the Volkswagen Defendants’ conduct is “unfair,” as it offended an established public policy. Further, the Volkswagen Defendants engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

208. Further, as set forth in this Complaint, Plaintiffs allege violations of consumer protection, unfair competition, and truth in advertising laws in California and other states, resulting in harm to consumers. The Volkswagen Defendants’ acts and omissions also violate and offend the public policy against engaging in false and misleading advertising, unfair competition, and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of Business & Professions Code §17200, et seq.

209. There were reasonably available alternatives to further the Volkswagen Defendants’ legitimate business interests, other than the conduct described herein. Business & Professions Code §17200, et seq., also prohibits any “fraudulent business act or practice.” In the course of conducting business, the Volkswagen Defendants committed “fraudulent business acts or practices” by, among other things, making the representations (which also constitute advertising within the meaning of §17200) and omissions of material facts regarding the Defective Vehicles in their advertising and marketing campaign, as set forth more fully herein. The Volkswagen Defendants made the misrepresentations and omissions regarding the emissions of the Defective Vehicles, among other ways, by misrepresenting that the Defective Vehicles were equipped with a clean diesel engine that was a low emissions vehicles that offered superior fuel efficiency and performance over comparable vehicles when in fact they did not and instead contained an illegal emissions defeat device.

210. The Volkswagen Defendants' actions, claims, omissions, and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code §17200, et seq.

211. Plaintiffs and the other Class Members have in fact been deceived as a result of their reliance on the Volkswagen Defendants' material representations and omissions, which are described above. This reliance has caused harm to Plaintiffs and the other Class Members, each of whom purchased the Volkswagen Defendants' vehicles. Plaintiffs and the other Class Members have suffered injury in fact and lost money as a result of purchasing the Defective Vehicles and the Volkswagen Defendants' unlawful, unfair, and fraudulent practices.

212. The Volkswagen Defendants knew, or should have known, that their material representations and omissions would be likely to deceive the consuming public and result in consumers purchasing the Defective Vehicles and, indeed, intended to deceive consumers.

213. As a result of its deception, the Volkswagen Defendants have been able to reap unjust revenue and profit.

214. Unless restrained and enjoined, the Volkswagen Defendants will continue to engage in the above described conduct. Accordingly, injunctive relief is appropriate.

215. Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, seeks restitution from the Volkswagen Defendants of all money obtained from Plaintiffs and the other Class Members collected as a result of unfair competition, an injunction prohibiting the Volkswagen Defendants from continuing such practices, corrective advertising, and all other relief this Court deems appropriate, consistent with Business & Professions Code §17203.

**COUNT XIV**  
**VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES**  
**ACT**  
**(On behalf of the Florida Subclass)**

216. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

217. Plaintiffs bring this count on behalf of themselves and the members of the Florida Subclass. (*See* ¶86, pp. 20-22.)

218. The purpose of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) is “to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” FLA. STAT. § 501.202 (2).

219. The Volkswagen Defendants have violated the Florida Deceptive and Unfair Trade Practice Act by engaging in unfair competition and unfair, unlawful or fraudulent business practices by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and Class Members the fact that the Defective Vehicles suffer from an emissions defect (and the costs, risks, and diminished value of the vehicles as a result of this defect). The Volkswagen Defendants should have disclosed this information because they were in a superior position to know the true facts related to this defect, and Plaintiffs and Class Members could not reasonably be expected to learn or discover the true facts related to this defect.

220. These unfair methods of competition and unfair and deceptive acts have caused injuries to Plaintiffs and Class Members.

**COUNT XV**  
**VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND  
CONSUMER PROTECTION LAW ACT (“PAUTPL”) (73 Pa. C. S. §§ 201-1, *et seq.*)**  
**(On behalf of the Pennsylvania Subclass)**

221. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

222. Plaintiffs bring this count on behalf of themselves and the members of the Pennsylvania Subclass. (*See* ¶86, pp. 20-22.)

223. This claim arises under the Pennsylvania Unfair Trade Practices and consumer Protection Law, 73 Pa.C.S. §§ 201-1, *et seq.*

224. Plaintiffs and Class Members are “persons” as defined by 73 Pa.C.S. 201-2 (2).

225. At all relevant times, the Volkswagen Defendants’ actions were committed in the course of trade or commerce within the meaning of 73 Pa.C.S. 201-2(3).

226. Plaintiffs and Class Members purchased or leased their subject vehicles primarily for personal, family or household purposes within the meaning of 73 Pa.C.S. 201-9.2.

227. The PAUTPL prohibits unfair or deceptive acts or practices “in the conduct of any trade or commerce.” Pa.C.S. 201-3.

228. The PAUTPL declares that acts such as “Representing that goods or services are of a particular standard, quality or grade...[;] advertising goods or services with the intent not to sell them as advertised;...[and] Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” 73 Pa.C.S. 201-2.

229. The Volkswagen Defendants made uniform representations that their diesel vehicles were of a particular standard, quality, or grade when they were and are not, and that they would perform as represented when they did not. As set forth above, the Volkswagen Defendants also made false and/or misleading statements regarding the capacity and

characteristics of Defective Vehicles that were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Pennsylvania Plaintiffs, and were made in violation of the PAUTPL.

230. In their communications with and disclosures to Pennsylvania Class Members, the Volkswagen Defendants intentionally concealed and/or failed to disclose that the Defective Vehicles included a software program designed to cheat emissions testing, and that the true emissions of those vehicles were far higher than claimed. Those omissions were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Pennsylvanians and were made in clear violation of the PAUTPL.

231. The Volkswagen Defendants had, at all material times, exclusive knowledge that the Defective Vehicles had the defects set forth above — facts unknown to Plaintiffs and Class Members. The Volkswagen Defendants' exclusive knowledge of these material facts gave rise to a duty to disclose such facts, which the Volkswagen Defendants failed to perform.

232. The representations made by the Volkswagen Defendants and the facts concealed and/or not disclosed by the Volkswagen Defendants are material facts that were likely to deceive reasonable consumers, and that a reasonable consumer would have relied on in deciding whether or not to purchase the Defective Vehicles.

233. The representations made by the Volkswagen Defendants, and the facts concealed and/or not disclosed by the Volkswagen Defendants, detrimentally affect the public interest. There is an inherent public interest in reducing emissions from vehicles and properly advertising emission levels. The Defective Vehicles did not operate as advertised and thus negatively affect the public interest.

234. Plaintiffs and Class Members justifiably acted, or relied to their detriment, on the Volkswagen Defendants' affirmative misrepresentations and the concealed and/or non-disclosed facts as evidenced by their purchase and/or use of the Defective Vehicles.

235. Had the Volkswagen Defendants disclosed all material information regarding the defeat devices, Plaintiffs and Class Members would not have purchased and used the Defective Vehicles.

236. The Volkswagen Defendants knew, or recklessly failed to know, that their statements about its "Clean Diesel" vehicles were false and/or misleading.

237. By the conduct described herein, the Volkswagen Defendants engaged in unfair or deceptive acts or practices in the conduct of business, trade, or commerce.

238. As a direct and proximate result of the Volkswagen Defendants' violations of the forgoing law, the Plaintiffs and Class Members have been injured.

239. The Plaintiffs and Class Members have been damaged and are entitled to all of the damages, remedies, fees, and costs available under the PAUTPL.

240. By virtue of the Volkswagen Defendants' violation of the PAUTPL, the Plaintiffs and Class Members are entitled to up to three times actual damages, but not less than one hundred dollars as well as attorney's fees and costs. 73 Pa.C.S. 201-9.2.

**COUNT XVI**  
**VIOLATION OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE**  
**PRACTICES ACT (N.C. GEN. STAT. §75-1.1, et. seq.)**  
**(On behalf of the North Carolina Subclass)**

241. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

242. Plaintiffs bring this claim on behalf of themselves and the members of the North Carolina Subclass. (*See* ¶86, pp. 20-22.)

243. This claims falls under the North Carolina Unfair and Deceptive Trade Practices Act pursuant to N.C. Gen. Stat. §75-1.1. et seq.

244. At all relevant times, the Volkswagen Defendants were engaged in trade or commerce within the meaning of N.C. Gen. Stat. §75-1.1. et seq.

245. North Carolina Unfair and Deceptive Trade Practices Act prohibits “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.” N.C. Gen. Stat. §75-1.1(a).

246. The Volkswagen Defendants violated the North Carolina Unfair and Deceptive Trade Practices Act by engaging in unfair competition and unfair, unlawful or fraudulent business practices by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and Class Members the fact that the Defective Vehicles suffer from an emissions defect (and the costs, risks, and diminished value of the vehicles as a result of this defect). The Volkswagen Defendants should have disclosed this information because they were in a superior position to know the true facts related to this defect, and Plaintiffs and Class Members could not reasonably be expected to learn or discover the true facts related to this defect.

247. These unfair methods of competition and unfair and deceptive acts have caused injuries to Plaintiffs and Class Members. Plaintiffs are entitled to damages allowed to the fullest extent of the law, including but not limited to compensatory, treble/punitive, incident and consequential damages, and other damages allowed by law.

**COUNT XVII**  
**VIOLATION OF THE MASSACHUSETTS CONSUMER PROTECTION ACT**  
**(CHAPTER 93A)**  
**(On behalf of the Massachusetts Subclass)**

248. Plaintiffs intend to assert a claim under G.L. c. 93A, the Massachusetts Consumer Protection Act, which makes it unlawful to engage in any “[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce.” G.L. c. 93A, § 2(1). Plaintiffs has made a demand in satisfaction of G.L. c. 93A, § 9(3), and will amend this Complaint to assert claims under Chapter 93A once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to assert a claim under Chapter 93A.

**COUNT XVIII**  
**VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT-CONSUMER**  
**PROTECTION ACT**  
**(TEX. BUS & COM. CODE ANN. §17.41 et seq.)**  
**(On behalf of the Texas Subclass)**

249. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

250. Plaintiffs bring this claim on behalf of themselves and the members of the Texas Subclass. (*See* ¶86, pp. 20-22.)

251. This claims falls under the Texas Deceptive Trade Practices Act-Consumer Protection Act, V.T.C.A., Bus. & C. 17.41, et seq.

252. Plaintiffs and Class Members are “persons” as defined by V.T.C.A., Bus. & C. §17.45.

253. At all relevant times, the Volkswagen Defendants were engaged in trade or commerce within the meaning of V.T.C.A., Bus. & C. §17.45.

254. Texas Deceptive Trade Practices Act-Consumer Protection Act prohibits false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. V.T.C.A., Bus. & C. §17.46.

255. The Volkswagen Defendants have engaged in false, misleading, or deceptive acts by knowingly and intentionally concealing from Plaintiffs and Class Members the fact that the Defective Vehicle suffer from an emissions defect (and the costs, risks, and diminished value of the vehicles as a result of this defect) and advertising that the vehicles were high performing, fuel efficient, environmentally friendly vehicles, the Volkswagen Defendants should have disclosed this information because they were in a superior position to know the true facts related to this defect, and Plaintiffs and Class Members could not reasonably be expected to learn or discover the true facts related to this defect.

256. These false, misleading, and deceptive acts have caused injuries to Plaintiffs and Class Members. Plaintiffs are entitled to damages allowed to the fullest extent of the law, including but not limited to compensatory, treble/punitive, incident and consequential damages, and other damages allowed by law.

**COUNT XIX**  
**VIOLATION OF THE OKLAHOMA DECEPTIVE TRADE PRACTICES ACT**  
**(OKLA. STAT. ANN. TIT. 78 § 51 et seq.)**  
**(On behalf of the Oklahoma Subclass)**

257. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

258. Plaintiffs bring this claim on behalf of themselves and the members of the Oklahoma subclass. (*See* ¶86, pp. 20-22.)

259. This claims falls under the Oklahoma Deceptive Trade Practices Act, 78 Okl.St. Ann. § 51, et seq.

260. Plaintiffs and Class Members are “persons” as defined by 78 Okl.St. Ann. § 52 (8)

261. At all relevant times, the Volkswagen Defendants were engaged in trade or commerce within the meaning of 78 Okl.St. Ann. § 53.

262. The Oklahoma Deceptive Trade Practices Act defines the following acts, among others, to be acts which constitute deceptive trade practices:

- a. Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods or services 78 Okl.St. Ann. § 53(A)(2).
- b. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits or quantities of goods or services or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith 78 Okl.St. Ann. § 53(A)(5).
- c. Represents that goods or services are a particular standard, quality, or grade, or that goods are a particular style or model, if they are another. 78 Okl.St. Ann. § 53(A)(9).
- d. Advertises goods or services which differ from those offered for sale in the advertisements 78 Okl.St. Ann. § 53(A)(9).

263. The Volkswagen Defendants have engaged in deceptive trade practice, unfair competition and unfair, unlawful or fraudulent business practices by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and Class Members the fact that the Defective Vehicles suffer from an emissions defect (and the costs, risks, and diminished value of the vehicles as a result of this defect). The Volkswagen Defendants should

have disclosed this information because they were in a superior position to know the true facts related to this defect, and Plaintiffs and Class Members could not reasonably be expected to learn or discover the true facts related to this defect.

264. These unfair methods of competition and unfair and deceptive acts have caused injuries to Plaintiffs and Class Members. Plaintiffs are entitled to damages allowed to the fullest extent of the law, including but not limited to compensatory, treble/punitive, incident and consequential damages, and other damages allowed by law.

**COUNT XX**  
**VIOLATION OF THE ALABAMA DECEPTIVE TRADE PRACTICES ACT**  
**(ALA. CODE §8-19-1)**  
**(On behalf of the Alabama Subclass)**

265. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

266. Plaintiffs bring this claim on behalf of themselves and the members of the Alabama subclass. (*See* ¶86, pp. 20-22.)

267. This claims falls under the Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, et seq.

268. Plaintiffs and Class Members are “persons” as defined by Ala. Code § 8-19-3.

269. At all relevant times, the Volkswagen Defendants were engaged in trade or commerce within the meaning of Ala. Code § 8-19-3.

270. The Alabama Deceptive Trade Practices Act defines the following acts, among others, to be acts which constitute deceptive trade practices:

- a. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or

that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have. Ala. Code § 8-19-3 (5)

- b. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. Ala. Code § 8-19-3 (7).
- c. Advertising goods or services with intent not to sell them as advertised. Ala. Code § 8-19-3 (9).
- d. Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce. Ala. Code § 8-19-3 (27).

271. The Volkswagen Defendants have engaged in deceptive trade practice, unfair competition and unfair, unlawful or fraudulent business practices by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and Class Members the fact that the Defective Vehicles suffer from an emissions defect (and the costs, risks, and diminished value of the vehicles as a result of this defect). The Volkswagen Defendants should have disclosed this information because they were in a superior position to know the true facts related to this defect, and Plaintiffs and Class Members could not reasonably be expected to learn or discover the true facts related to this defect.

272. These unfair methods of competition and unfair and deceptive acts have caused injuries to Plaintiffs and Class Members. Plaintiffs are entitled to damages allowed to the fullest extent of the law, including but not limited to compensatory, treble/punitive, incident and consequential damages, and other damages allowed by law.

**COUNT XXI**  
**VIOLATION OF THE MISSISSIPPI CONSUMER PROTECTION ACT**  
**(MISS. CODE ANN. §75-24-1, et seq.)**  
**(On behalf of the Mississippi Subclass)**

273. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

274. Plaintiffs bring this claim on behalf of themselves and the members of the Mississippi subclass. (*See* ¶86, pp. 20-22.)

275. This claims falls under the Mississippi Consumer Protection Act, Miss. Code Ann. §75-24-1, et seq.

276. Plaintiffs and Class Members are “persons” as defined by Miss. Code Ann. §75-24-3.

277. At all relevant times, the Volkswagen Defendants were engaged in trade or commerce within the meaning of Miss. Code Ann. §75-24-3.

278. The Mississippi Consumer Protection Act prohibits unfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce. Miss. Code Ann. §75-24-5 (1).

279. The Mississippi Consumer Protection Act defines the following acts, among others, to be acts which constitute unfair methods of competition and unfair or deceptive trade practices or acts in the conduct of any trade or commerce:

- a. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have. Miss. Code Ann. §75-24-5 (1)(e).

- b. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. Miss. Code Ann. §75-24-5 (1)(g).
- c. Advertising goods or services with intent not to sell them as advertised. Miss. Code Ann. §75-24-5 (1)(i).

280. The Volkswagen Defendants have engaged in deceptive trade practice, unfair competition and unfair, unlawful or fraudulent business practices by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and Class Members the fact that the Defective Vehicles suffer from an emissions defect (and the costs, risks, and diminished value of the vehicles as a result of this defect). The Volkswagen Defendants should have disclosed this information because they were in a superior position to know the true facts related to this defect, and Plaintiffs and Class Members could not reasonably be expected to learn or discover the true facts related to this defect.

281. These unfair methods of competition and unfair and deceptive acts have caused injuries to Plaintiffs and Class Members. Plaintiffs are entitled to damages allowed to the fullest extent of the law, including but not limited to compensatory, treble/punitive, incident and consequential damages, and other damages allowed by law.

**COUNT XXII**  
**VIOLATION OF THE KANSAS UNFAIR TRADE AND CONSUMER PROTECTION**  
**ACT (K.S.A. §§ 50-623, et. seq. )**  
**(On behalf of the Kansas Subclass)**

282. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

283. Plaintiffs bring this claim on behalf of themselves and the members of the Kansas Subclass. (*See* ¶86, pp. 20-22.)

284. This claims falls under the Kansas Unfair Trade and Consumer Protection Act pursuant to K.S.A. §§ 50-623, et seq.

285. Plaintiffs and Class Members are “persons as defined by K.S.A. §50-624(i).

286. At all relevant times, the Volkswagen Defendants were engaged in trade or commerce within the meaning of K.S.A. §50-624(c).

287. Kansas Unfair Trade and Consumer Protection Act states that “no supplier shall engage in any deceptive act or practice in connection with a consumer transaction.” K.S.A. §50-626.

288. Under the Kansas Unfair Trade and Consumer Protection Act, deceptive acts and practices include, but are not limited to, the following, each of which is declared to be in violation of the act, whether or not any consumer has in fact been misled:

- 1) Representations made knowingly on with reason to know that:
  - a. Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have K.S.A. §50-626(1)(A)
  - b. property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation K.S.A. §50-626(1)(D)
  - c. property or services has uses, benefits or characteristics unless the supplier relied upon and possesses a reasonable basis for making such representation K.S.A. §50-626 (1)(F)

- 2) The willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact. K.S.A. §50-626 (2)
- 3) The willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact. K.S.A. §50-626 (3)

289. The Volkswagen Defendants made uniform representations that their diesel vehicles were of a particular standard, quality, or grade when they were and are not, and that they would perform as represented when they did not. As set forth above, the Volkswagen Defendants also made false and/or misleading statements regarding the capacity and characteristics of Defective Vehicles that were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Kansas Plaintiffs, and were made in violation of the Kansas Unfair Trade and Consumer Protection Act.

290. In their communications with and disclosures to Kansas Class Members, the Volkswagen Defendants intentionally concealed and/or failed to disclose that the Defective Vehicles included a software program designed to cheat emissions testing, and that the true emissions of those vehicles were far higher than claimed. Those omissions were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Kansans and were made in clear violation of the Kansas Unfair Trade and Consumer Protection Act.

291. The Volkswagen Defendants had, at all material times, exclusive knowledge that the Defective Vehicles had the defects set forth above — facts unknown to Kansas Class Members. The Volkswagen Defendants' exclusive knowledge of these material facts gave rise to a duty to disclose such facts, which the Volkswagen Defendants failed to perform.

292. The representations made by the Volkswagen Defendants and the facts concealed and/or not disclosed by the Volkswagen Defendants are material facts that were likely to deceive

reasonable consumers, and that a reasonable consumer would have relied on in deciding whether or not to purchase the Defective Vehicles.

293. The representations made by the Volkswagen Defendants, and the facts concealed and/or not disclosed by the Volkswagen Defendants, detrimentally affect the public interest. There is an inherent public interest in reducing emissions from vehicles and properly advertising emission levels. The Defective Vehicles did not operate as advertised and thus negatively affect the public interest.

294. Kansas Class Members justifiably acted, or relied to their detriment, on the Volkswagen Defendants' affirmative misrepresentations and the concealed and/or non-disclosed facts as evidenced by their purchase and/or use of the Defective Vehicles.

295. Had the Volkswagen Defendants disclosed all material information regarding the defeat devices, Kansas Class Members would not have purchased and used the Defective Vehicles.

296. The Volkswagen Defendants knew, or recklessly failed to know, that their statements about their "Clean Diesel" vehicles were false and/or misleading.

297. By the conduct described herein, the Volkswagen Defendants engaged in unfair or deceptive acts or practices in the conduct of business, trade, or commerce.

298. As a direct and proximate result of the Volkswagen Defendants' violations of the forgoing law, the Plaintiffs and Class Members have been injured. Plaintiffs and Class Members are entitled to damages allowed to the fullest extent of the law, including but not limited to compensatory, treble/punitive, incident and consequential damages, and other damages allowed by law.

**COUNT XXIII**  
**VIOLATION OF THE GEORGIA FAIR BUSINESS PRACTICES ACT OF 1975**  
**(On behalf of the Georgia Subclass)**

299. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

300. Plaintiffs bring this claim on behalf of themselves and the members of the Georgia subclass. (*See* ¶86, pp. 20-22.)

301. This claim falls under the Georgia Fair Business Practices Act of 1975 pursuant to Ga. Ann. Code §10-1-390.

302. Plaintiffs and Class Members are “persons” as defined by Ga. Code Ann. §10-1-392.

303. Plaintiffs and Class Members have a private cause of action under the Act pursuant to Ga. Code Ann. §10-1-399.

304. At all relevant times, the Volkswagen Defendants were engaged in trade or commerce within the meaning of Ga. Code Ann. § 10-1-391.

305. The purpose of the Georgia Fair Business Practices Act is to “protect consumers and legitimate business enterprises from unfair or deceptive practices in the conduct of any trade or commerce in part or wholly in the state. Ga. Code. Ann. § 10-1-391.

306. The Georgia Fair Business Practices Act declares the following behaviors, among others, unlawful:

- a. Representing that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another. Ga. Code Ann. §10-1-393 (b)(7)

- b. Advertising goods or services with intent not to sell them as advertised Ga. Code. Ann. §10-1-393(b)(9).

307. The Volkswagen Defendants made uniform representations that their diesel vehicles were of a particular standard, quality, or grade when they were and are not, and that they would perform as represented when they did not. As set forth above, the Volkswagen Defendants also made false and/or misleading statements regarding the capacity and characteristics of Defective Vehicles that were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Georgia Plaintiffs, and were made in violation of the Georgia Fair Business Practices Act.

308. In their communications with and disclosures to Plaintiffs and Class Members, the Volkswagen Defendants intentionally concealed and/or failed to disclose that the Defective Vehicles included a software program designed to cheat emissions testing, and that the true emissions of those vehicles were far higher than claimed. Those omissions were unfair or deceptive, had and continue to have the capacity to deceive the public, cause injury to Georgians and were made in clear violation of the Georgia Fair Business Practices Act.

309. The Volkswagen Defendants had, at all material times, exclusive knowledge that the Defective Vehicles had the defects set forth above — facts unknown to Plaintiffs and Class Members. The Volkswagen Defendants' exclusive knowledge of these material facts gave rise to a duty to disclose such facts, which the Volkswagen Defendants failed to perform.

310. The representations made by the Volkswagen Defendants and the facts concealed and/or not disclosed by the Volkswagen Defendants are material facts that were likely to deceive reasonable consumers, and that a reasonable consumer would have relied on in deciding whether or not to purchase the Defective Vehicles.

311. The representations made by the Volkswagen Defendants, and the facts concealed and/or not disclosed by the Volkswagen Defendants, detrimentally affect the public interest. There is an inherent public interest in reducing emissions from vehicles and properly advertising emission levels. The Defective Vehicles did not operate as advertised and thus negatively affect the public interest.

312. Plaintiffs and Class Members justifiably acted, or relied to their detriment, on the Volkswagen Defendants' affirmative misrepresentations and the concealed and/or non-disclosed facts as evidenced by their purchase and/or use of the Defective Vehicles.

313. Had the Volkswagen Defendants disclosed all material information regarding the defeat devices, Plaintiffs and Class Members would not have purchased and used the Defective Vehicles.

314. The Volkswagen Defendants knew, or recklessly failed to know, that their statements about their "Clean Diesel" vehicles were false and/or misleading.

315. By the conduct described herein, the Volkswagen Defendants engaged in unfair or deceptive acts or practices in the conduct of business, trade, or commerce.

316. As a direct and proximate result of the Volkswagen Defendants' violations of the forgoing law, the Plaintiffs and Class Members have been injured. Plaintiffs and Class Members are entitled to damages allowed to the fullest extent of the law, including but not limited to compensatory, treble/punitive, incident and consequential damages, and other damages allowed by law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and all other similarly situated Class and such Class Members, respectfully request judgment against the Volkswagen Defendants and other relief as follows:

(1) Declare this action to be a proper class action maintainable under Rule 23(b)(2) or Rule 23(b)(3) of the Federal Rules of Civil Procedure and designating and appointing Plaintiffs as Class and Subclass Representative and Plaintiffs' chosen counsel Kreindler & Kreindler LLP as Class Counsel;

(2) Declare that the conduct of the Volkswagen Defendants as alleged herein is unlawful, deceptive, unfair or deceptive and issue an order temporarily and permanently enjoining the Volkswagen Defendants from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

(3) Declare that the Volkswagen Defendants must disgorge, for the benefit of Plaintiffs and Class Members all or part of the ill-gotten gains they received from the sale or lease of the Defective Vehicles;

(4) Award Plaintiffs and Class Members actual, compensatory damages, or, in the alternative, statutory damages, as proven at trial;

(5) Award Plaintiffs and Class Members punitive damages in such amount as proven at trial;

(6) Award Plaintiffs and class Members actual, statutory, treble/punitive or any other form of damages to the maximum extent permitted by applicable law.

(7) Award Plaintiffs and Class Members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest; and



# **Exhibit A**



750 Third Avenue  
New York, NY 10017-2703  
(212) 687-8181  
Fax: (212) 972-9432  
www.kreindler.com

DRose@kreindler.com  
(212) 973-3403

October 2, 2015

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Michael Horn, President and CEO  
Volkswagen Group of America, Inc.  
Volkswagen of America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171

Dear Mr. Horn:

We represent Charles Allen, Carl Batiste, George Coyne, Angela Dotson, Christian Duarte, Daniel Flynn, Shari Jay, Lisa Johnson, Jennifer Jones, Robert Lenke, Steven Mendoza, Jordan Pippen, Vincent Pollock, Marcos Rodrigues, Troy Rudolph, Donovan Schweigert, Teresa Toler, and Congxiang Zha (“Plaintiffs”) and all other consumers similarly situated in an action against Volkswagen Group of America, Inc. and Volkswagen of America, Inc. (collectively “Volkswagen Defendants”) arising out of, *inter alia*, the Volkswagen Defendants’ marketing, advertising, and sale of certain diesel vehicles. Specifically, these vehicles include: Volkswagen Jetta (Model Years 2009 – 2015), Volkswagen Jetta Sportwagen (Model Years 2009-2014), Beetle (Model Years 2012 – 2015), Volkswagen Beetle Convertible (Model Years 2012-2015), Audi A3 (Model Years 2010 – 2015), Volkswagen Golf (Model Years 2010 – 2015), Volkswagen Golf Sportwagen (MY 2015), and Volkswagen Passat (MY 2012-2015) (collectively the “Defective Models”).

Pursuant to the California Consumer Legal Remedies Act (the “CLRA”), Civil Code section 1750 *et seq.*, our clients on behalf of themselves and all other similarly situated consumers in California (collectively the “Class”), through the undersigned counsel, hereby notify you that the Volkswagen Defendants and any of their subsidiaries involved in the marketing and sale of the Defective Models for years 2009 through 2015, are alleged to have violated the CLRA for the reasons set forth below.

**California Office**

707 Wilshire Boulevard, Los Angeles, CA 90017-3613  
Tel: (213) 622-6469 Fax: (213) 622-6019

**Massachusetts Office**

855 Boylston Street, Boston, MA 02116-2688  
Tel: (617) 424-9100 Fax: (617) 424-9120

Michael Horn, President and CEO  
Volkswagen Group of America, Inc.  
October 2, 2015  
Page 2

For all of the Defective Vehicles, the Volkswagen Defendants intentionally installed sophisticated software in the vehicles which was used to cheat state and federal emissions testing. The software allowed the Defective Vehicles to detect when they were undergoing emission testing and turn on their environmental controls, thereby, emitting less nitrogen oxide into the environment. Once on the road, the environmental controls were turned off, and the Defective Vehicles polluted freely.

The Volkswagen Defendants, through a national, expansive marketing campaign, which included TV, print, and online advertisements, promoted the Defective Vehicles as running on “clean diesel” technology. The Volkswagen Defendants falsely represented to consumers that not only were these Defective Vehicles “environmentally friendly”, but they also offered the same performance as comparable gasoline powered vehicles and excellent mileage. Plaintiffs and other similarly situated consumers purchased the Defective Vehicles, at a premium, based on the Volkswagen Defendants’ representations.

From 2013 through 2014, Researchers from West Virginia University and investigators from both the Environmental Protection Agency (“EPA”) and the California Air Resources Board (“CARB”) investigated the Defective Vehicles. They found that on the open road, the Defective Vehicles were emitting between 10 to 40 times the amount of nitrogen oxide legally allowed under state and federal law.

As early as May 2014, the EPA and CARB asked the Volkswagen Defendants to correct the defect so that the cars would be compliant with legal mandates. The Volkswagen Defendants represented that they had corrected the problem, but in fact they had not. The Volkswagen Defendants continued to manufacture, sell, and advertise the Defective Vehicles knowing that they had taken no action to correct the emissions problem. The Volkswagen Defendants finally admitted that they had intentionally designed the cars to cheat the emissions testing, after the EPA threatened that it would not certify the Defendants’ 2016 line of vehicles. On September 18, 2015, the EPA issued a Notice of Violation to the Volkswagen Defendants due to their failure to comply with emissions standards.

Plaintiffs and other similarly situated consumers are now stuck with Defective Vehicles that are emitting pollution which far exceeds safe or legal levels. Even if the Volkswagen Defendants are able to fix the emission problem by turning on the Defective Vehicles’ environmental controls, it is unlikely that the Plaintiffs’ vehicles will remain both fuel efficient and high performing once they are made compliant with the law. Plaintiffs and other similarly situated consumers have overpaid for vehicles that are not worth a premium price. Moving forward, if the Defective Vehicles are made compliant with the law, Plaintiffs will have to pay more money for gasoline to fuel their less efficient cars. The resale value of Plaintiffs’ cars has

Michael Horn, President and CEO  
Volkswagen Group of America, Inc.  
October 2, 2015  
Page 3

been substantially degraded due to the Defendants' fraudulent actions. Not to mention, Plaintiffs have to deal with the fact that such a pervasive, systemic fraud has been perpetrated against them.

The Volkswagen Defendants' false advertising and marketing practices has caused significant consequences for our clients and other consumers in California. The Volkswagen Defendants' practices constitute violations of the Consumers Legal Remedies Act, California Civil Code §1750, et seq. Specifically, the Volkswagen Defendants' practices violate California Civil Code §1770(a), *inter alia*, the following subdivisions:

- (5) Representing that goods or services have...approval, characteristics...uses [or] benefits... which they do not have...

\*\*\*

- (7) Representing that goods or services are of a particular standard, quality, or grade... if they are of another.

\*\*\*

- (9) Advertising goods or services with intent not to sell them as advertised.

\*\*\*

- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

The Volkswagen Defendants' practices also violate the California Business and Professions Code §17200, et seq., the Magnuson-Moss Act, and various common laws.

Pursuant to California Civil Code §1782, and based on the foregoing, we hereby demand that within thirty (30) days of receiving this letter, the Volkswagen Defendants correct their advertising, correct the defects and violations, accurately disclose the defects and violations, and further that the Volkswagen Defendants reimburse and/or compensate our clients and other similarly situated consumers who purchased or leased the Defective Vehicles.

In the event that the Volkswagen Defendants decline or fail to comply with this demand, our clients will seek monetary damages for themselves and the Class, in addition to any other such relief as may be proper.

Michael Horn, President and CEO  
Volkswagen Group of America, Inc.  
October 2, 2015  
Page 4

If you have any questions regarding this notice and demand, please do not hesitate to contact us. As our clients are represented by counsel, all communications should be directed to counsel.

Very truly yours,

KREINDLER & KREINDLER LLP

DOR:iw  
Enclosure

By: \_\_\_\_\_  
Daniel O. Rose

# **Exhibit B**

Daniel O. Rose, Esq.  
Noah H. Kushlefsky, Esq.  
Kreindler & Kreindler, LLP  
750 Third Avenue  
New York, NY 10017  
Phone: 212-687-8181  
Fax: 212-972-9432  
E-Mail: [drose@kreindler.com](mailto:drose@kreindler.com)  
E-Mail: [nkushlefsky@kreindler.com](mailto:nkushlefsky@kreindler.com)

Anthony Tarricone, Esq.  
Kreindler & Kreindler LLP  
855 Boylston Street  
Boston, MA 02116  
Phone: 617-424-9100  
Fax: 617-424-9120  
E-Mail: [atarricone@kreindler.com](mailto:atarricone@kreindler.com)

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

---

CHARLES ALLEN, CARL BATISTE, GEORGE  
COYNE, ANGELA DOTSON, CHRISTIAN  
DUARTE, DANIEL FLYNN, SHARI JAY, LISA  
JOHNSON, JENNIFER JONES, ROBERT LENKE,  
STEVEN MENDOZA, JORDAN PIPPEN,  
VINCENT POLLOCK, MARCOS RODRIGUES,  
TROY RUDOLPH, DONOVAN SCHWEIGERT,  
TERESA TOLER, AND CONGXIANG ZHA,  
individually and on behalf of all others similarly  
situated,

NEWARK VICINAGE  
CIVIL ACTION NO.

**DECLARATION OF  
DANIEL O. ROSE**

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,  
VOLKSWAGEN OF AMERICA, INC., AND  
VOLKSWAGEN AKTIENGESELLSCHAFT.

Defendants.

---

Daniel O. Rose, Esq., of full age, hereby declare as follows:

1. I am an attorney duly licensed to practice before all the courts of the State of New Jersey and this Honorable Court. I am a member of the law firm Kreindler & Kreindler, LLP, and counsel of record for plaintiffs in the above-titled action.

2. Upon information and belief, Defendants Volkswagen Group of America, Inc. and Volkswagen of America, Inc. have conducted, and are conducting, business in Essex County, New Jersey in that they market and sell Volkswagen vehicles there.

I hereby declare under penalty of perjury that the foregoing statements are true and correct.

Dated: 10/2/2015

s/Daniel O. Rose

Daniel O. Rose

JS 44 (Rev. 12/12)

### 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**

Charles Allen, Carl Batiste, Angela Dotson, Christian Duarte, Daniel Flynn, Shari Jay, Lisa Johnson, Jennifer Jones, Robert Lenke, Steven Mendoza, Jordan Phippen, Vincent Pollock, Marcos Rodrigues, et al.

(b) County of Residence of First Listed Plaintiff Johnston, NC  
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Kreindler & Kreindler LLP  
750 Third Avenue, 32nd Floor, New York, NY 10017  
info@kreindler.com (212) 687-8181

**DEFENDANTS**

Volkswagen Group of America, Inc., Volkswagen of America, Inc., and Volkswagen Aktiengesellschaft

County of Residence of First Listed Defendant Fairfax, VA  
(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
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		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 checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" 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)

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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<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"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input 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	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<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))
			<b>IMMIGRATION</b> <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

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332(d)(2)  
 Brief description of cause:  
Volkswagen emissions fraud class action

**VII. REQUESTED IN COMPLAINT:**

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

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

(See instructions): JUDGE Jose L. Linares DOCKET NUMBER 15-6985(JLL)(JAD)

DATE 10/02/2015 SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

FOR OFFICE USE ONLY

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