

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

2015 OCT -6 P 5:00

CLERK U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

MARIA BOURN, DAVID WATSON,
STEPHEN VERNER, and MARK
SCHUMACHER, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN AG, VOLKSWAGEN OF
AMERICA GROUP, INC., VOLKSWAGEN
OF AMERICA, INC., AUDI OF AMERICA,
LLC, and AUDI AG,

Defendants.

Case No. 1:15 CV 1295

JURY TRIAL DEMANDED

LOG/MSV

CLASS ACTION COMPLAINT

Plaintiffs Maria Bourn, David Watson, Steven Verner, and Mark Schumacher bring this action on their own behalf and on behalf of a class of similarly situated persons against Volkswagen AG (“VWAG”), Volkswagen of America Group, Inc. and Volkswagen of America, Inc. (collectively, “VWoA”), and Audi of America, LLC and Audi AG (collectively, “Audi”).¹ Plaintiffs seek injunctive relief and to recover damages caused by Volkswagen’s violations of Section 2 of the Sherman Antitrust Act (15 U.S.C. § 2), the Racketeer Influenced and Corrupt Organizations Act (“RICO”) (18 U.S.C. § 1961 *et seq.*), the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et seq.*), the common law of fraud and unjust enrichment. and the statutory laws of California and Virginia. Plaintiffs make the following allegations upon information and belief,

¹ Unless otherwise indicated herein, all of these defendants will be referred to collectively as “Volkswagen.”

except as to those allegations pertaining to the named plaintiffs, which are made on personal knowledge.

I. NATURE OF THE ACTION.

1. Four years ago, Martin Winterkorn (“Winterkorn”), Volkswagen’s former Chief Executive Officer (“CEO”), announced Volkswagen’s goal to become the world’s largest automaker. “By 2018,” he told U.S. politicians gathered for the opening of a Volkswagen plant in Chattanooga, Tennessee, “we want to take our group to the very top of the global car industry.”² With only a relatively small share of the gigantic United States market, Winterkorn’s ambitious plan required a dramatic increase in sales in that market. And the way to increase sales here, Volkswagen decided, was to convince American consumers that its diesel-powered cars were a superior alternative, with better fuel efficiency, lower emissions, and uncompromised performance.

2. Between 2009 and September 18, 2015, Volkswagen aggressively marketed its so-called Clean Diesel Turbocharged Direct Injection (“TDI”) light passenger vehicles in the United States, spending millions of dollars on print, television, internet and point-of-sale advertising aimed at convincing American consumers that its cars were environmentally-friendly, fuel-efficient, powerful, and reasonably priced. In order to increase its market share, Volkswagen’s cars needed all those attributes to win over a skeptical American public. Compared with Europe, with its higher fuel costs, expensive cars and less stringent tailpipe emission standards, the United States market was a tough sell for diesel-powered passenger cars.

3. Until September 18, 2015, it looked as if Winterkorn’s ambitious plan had succeeded. In July of 2015, Volkswagen surpassed Toyota Corporation (“Toyota”) as the world’s largest automaker, selling 5.04 million vehicles in the first six months of this year, compared to

² http://www.nytimes.com/2015/09/27/business/as-vw-pushed-to-be-no-1-ambitions-fueled-a-scandal.html?_r=0.

Toyota's 5.02 million.³

4. As noted above, the United States was a key part of this global strategy. As reported in *Automotive News*:

Back in 2007, the automaker vowed to crank up U.S. sales of its VW brand to 800,000 vehicles a year by 2018. It was a dizzying sum, requiring more than a tripling of its volume at that time. Many in the industry scoffed.

But with steady precision, VW got the skeptics to take a second look. It launched a lower-priced, Mexico-made Jetta and built a plant in Chattanooga that began churning out a new Passat that better fit American tastes and budgets. VW sales doubled between 2009 and 2012, to nearly 440,000, lifting hopes that 800,000 was doable.⁴

By October 1, 2015, VWoA had reported sales of 264,215 passenger vehicles in the United States through September 15, indicating that before the scandal that is the subject of this Complaint surfaced, it was expecting another excellent sales year.⁵

5. Unfortunately for American consumers, Volkswagen's success in capturing market share was based on a lie. On September 18, 2015, the United States Environmental Protection Agency ("EPA") and the California Air Resources Board ("CARB") both notified Volkswagen that it had violated federal and state laws and regulations by using a "defeat device"--software specifically intended to circumvent emission test procedures established by the EPA and by CARB. Those notices are attached as Exhibits 1 and 2 to this complaint.

6. Volkswagen's "defeat device" is a "sophisticated software algorithm"⁶ that detects

³ <http://www.usatoday.com/story/money/2015/07/28/volkswagen-surpasses-toyota-worlds-largest-automaker-first-half-2015/30772509/>.

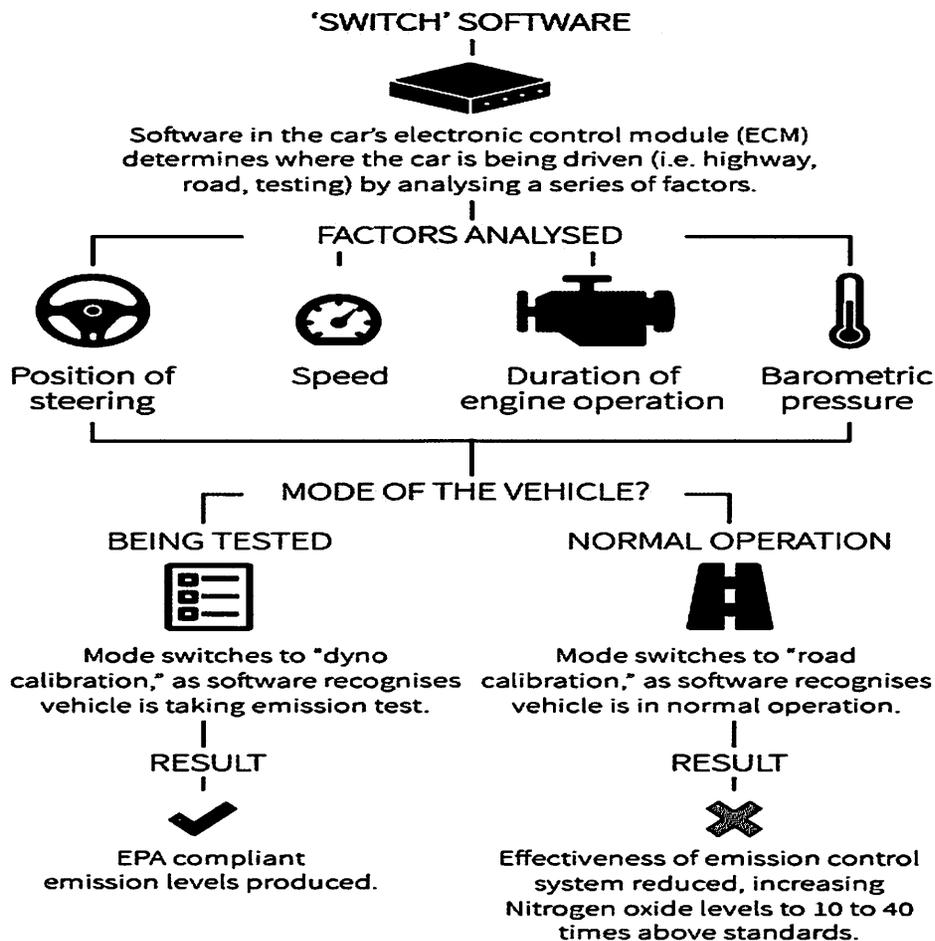
⁴ <http://www.autonews.com/article/20150126/RETAIL01/301269949/how-vw-veered--off-target>.

⁵ <http://media.vw.com/release/1080/>.

⁶ <http://www.theguardian.com/business/2015/sep/18/epa-california-investigate-volkswagen-clean-air-violations>.

when the car is undergoing emissions testing. Under such laboratory test conditions, Volkswagen’s vehicles pass the EPA and CARB emissions tests with flying colors. Under normal driving situations, however, the software algorithm *turns off* the emissions control systems, allowing the cars to spew as much as 40 times the allowable amount of pollutants--specifically nitrogen oxides (“NOx”)--into the air. Elevated NOx contributes to the creation of ozone and smog, and is linked to asthma attacks, other respiratory diseases such as emphysema and bronchitis, and causes premature death. A diagram published in Reuters depicts its operation:

How Volkswagen’s defeat device works



Source: U.S. Environmental Protection Agency

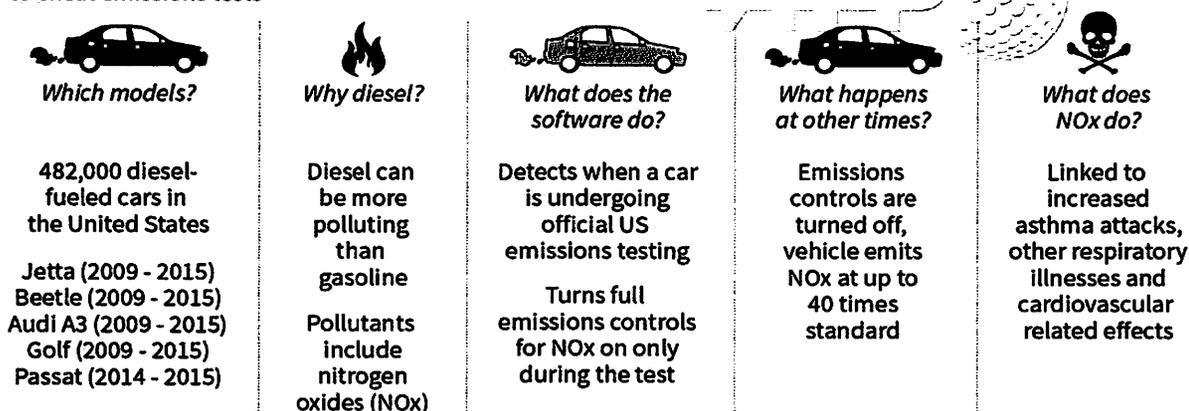
J. Wang, 22/09/2015

REUTERS

7. The chart below, published by *Agence France Press*, provides a useful and concise primer on the known facts:

Volkswagen's alleged pollution-hiding cars

US Environmental Protection Agency says VW admitted it had equipped cars with software to cheat emissions tests



Source: USEPA/Autonews.com

AFP

8. As noted below, dozens of fatalities in the United States over the last seven years have been attributed to the illegal use of this “defeat device.” The scandal has been popularly referred to as “Dieselgate.”

9. Volkswagen has admitted to installing these “defeat devices” in 11 million diesel vehicles that have been sold around the world, including the 482,000 in the United States. As Michael Horn (“Horn”), the President and CEO of VWoA, candidly admitted: “[I]et’s be clear about this. **Our company was dishonest. With the EPA, and the California Air Resources Board, and with all of you. And in my German words, we have totally screwed up.**”⁷ (Emphases added). Horn further stated in a video on VWAG’s website that “[o]ur company

⁷ <http://www.roadandtrack.com/new-cars/car-technology/news/a26774/volkswagen-ceo-we-screwed-up/>. A YouTube video of this extraordinary concession can be found here: www.youtube.com/watch?v=Q6z8uUJE-jE.

betrayed the trust of you, our customers, our employees, our dealers and the public.”⁸ (Emphases added). And as VWAG has posted on its website: “[g]overnment regulations limit the use of engine software that reduces the effectiveness of a vehicle’s emissions control systems. **Those are the ‘defeat device’ regulations, and regrettably, VW violated those regulations. We take full responsibility – and deeply regret that this happened.”**⁹ (Emphases added). In a September 23, 2015 press release available on VWAG’s website, the Executive Committee of VWAG’s Supervisory Board (“Board”) stated: “[t]he Executive Committee takes this matter extremely seriously. **The Executive Committee recognizes not only the economic damage caused, but also the loss of trust among many customers worldwide.”**¹⁰ (Emphases added). Or, as Berthold Huber (“Huber”), Deputy Chairman of the Board, was quoted as saying in a September 25 press release, “[t]he test manipulations are a moral and political disaster for Volkswagen. **The unlawful behavior of engineers and technicians involved in engine development shocked Volkswagen just as much as it shocked the public.”**¹¹ (Emphases added).

10. In light of the scandal, VWAG’s Board forced Winterkorn to resign as CEO of VWAG on September 23.¹² In doing so, he stated that **“I accept responsibility for the irregularities that have been found in diesel engines.”** (Emphases added).¹³ He further observed

⁸ <https://www.vwdieselinfo.com/>.

⁹ <http://www.vwdieselinfo.com/faqs/>.

¹⁰ http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/AR_Erklaerung.html.

¹¹ http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/Erklaerung.html.

¹² <http://www.spiegel.de/international/business/falsified-emissions-scandal-push-volkswagen-to-limits-a-1055897.html>

¹³ <http://www.nytimes.com/2015/09/24/business/international/volkswagen-chief-martin-winterkorn-resigns-amid-emissions-scandal.html>. Notably, however, Winterkorn plans to stay as the Chairman of the Board of Directors of Porsche Automobil Holding SE, which owns a 52% controlling stake in VWAG; he is also still demanding payment of the ten million Euros owed to him under his employment contract, which does not expire until 2016.

that “[m]illions of people across the world trust our brands, our cars and our technologies. I am endlessly sorry that we have disappointed this trust. I apologize in every way to our customers, to authorities and the whole public for the wrongdoing.”¹⁴ (Emphases added). He professed surprise that “misconduct on such a scale” (emphases added) occurred within the Volkswagen group, suggesting that he had no knowledge of it.¹⁵ It has been reported that Winterkorn was being investigated for fraud in connection with the conduct at issue here by prosecutors in Lower Saxony; however, more recently, those prosecutors have stated that any prosecution will await further factual information.¹⁶

11. Volkswagen has ordered its authorized dealers (“Volkswagen Authorized Dealers”) to cease selling the vehicles in which the defeat devices are installed. These include at least the VW Jetta TDI (Model Years 2009-15), the VW Jetta SportWagen TDI (Model Years 2009-14), the VW Golf TDI (Model Years 2010-15), the VW Golf SportWagen TDI (Model Year 2015), the VW Beetle TDI and VW Beetle Convertible TDI (Model Years 2012-15), the VW Passat TDI (Model Years 2012-15) and the Audi A3 TDI (Model Years 2010-15).¹⁷ These affected vehicles will be referred to in this Complaint as the “Class Vehicles.”

12. Volkswagen’s internal investigation has resulted so far in the suspension of three

<http://www.spiegel.de/international/business/falsified-emissions-scandal-push-volkswagen-to-limits-a-1055897.html>.

¹⁴ <http://www.chicagotribune.com/business/ct-volkswagen-emissions-scandal-20150922-story.html>.

¹⁵

http://www.salon.com/2015/09/24/i_am_stunned_that_misconduct_on_such_a_scale_was_possible_what_you_need_to_know_about_the_volkswagen_mega_scandal/.

¹⁶ <http://www.autonews.com/article/20151001/COPY01/310019972/german-prosecutors-backtrack-on-winterkorns-role-in-vw-probe>.

¹⁷ <http://www.thetruthaboutcars.com/2015/09/vw-audi-canada-halting-sales-tdi-cars-following-us-inquiry/>; <http://www.vwdieselinfo.com/faqs/>.

executives: (a) Heinz-Jakob Neusser (“Neusser”); (b) Ulrich Hackenberg (“Hackenberg”); and (c) Wolfgang Hatz (“Hatz”).¹⁸ Spiegel Online described Hackenberg’s departure, which was also typical of the others: “[h]e received news of his immediate suspension from the personnel department and was asked to turn in his company phone and leave his office. He has also been told not to set foot on company premises.”¹⁹

13. None of these people are mere obscure midlevel engineers. Hackenberg is a VWAG Board member for Technical Development.²⁰ The same Spiegel Online article described Hackenberg as “a long-time confidant of Winterkorn and, up until just a few days ago, one of the most powerful men at VW.” Hatz is a Porsche AG (“Porsche”) Board of Management member in charge of Research and Development and is additionally Head of Engines and Transmissions Development for the Volkswagen Group.²¹ Neusser was responsible for engine development at Porsche commencing in 1998 and drivetrain development commencing in 2011; in October of 2012, he succeeded Hatz as Head of Powertrain Development at the Volkswagen Group.²²

14. The same Spiegel Online article notes that Hans-Dieter Pötsch (“Pötsch”), the VWAG Finance Chief and Board Chairman of VWAG, may also be under investigation by regulatory authorities. As discussed below, Volkswagen told the EPA about the use of a defeat device on September 3, but disclosed it publicly only on September 20. “[T]he finance chief

¹⁸ <http://uk.reuters.com/article/2015/09/29/uk-volkswagen-emissions-idUKKCN0RS0U620150929>.

¹⁹ <http://www.spiegel.de/international/business/falsified-emissions-scandal-push-volkswagen-to-limits-a-1055897.html>.

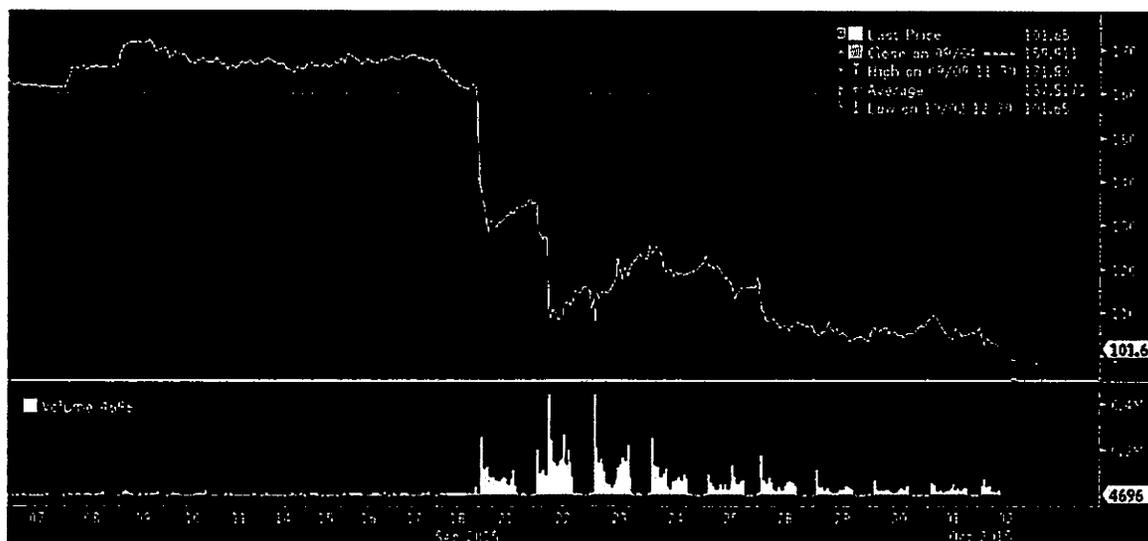
²⁰ <http://www.audi.com/corporate/en/company/corporate-management/members-of-the-board/ulrich-hackenberg.html>.

²¹ http://press.porsche.com/more_about/executives/pag/hatz.php.

²²

http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2012/09/Dr_Heinz_Jakob_Neusser.html.

remained silent for 17 days. During these 17 days, hundreds of thousands of investors bought VW stock. When the scandal was finally made public on Sept. 20, the price of VW shares plunged by 40 percent, costing stockholders €35 billion.”²³ VWAG’s shares have been on a steady decline ever since, as reflected in this graphic from the *Telegraph* in the United Kingdom:



15. According to an October 3 article from Reuters, “[a]t an internal company meeting this week at the VW headquarters in Wolfsburg, Pötsch described the situation as an ‘existence-threatening crisis for the company’, Germany’s *Welt am Sonntag* reported in a release ahead of Sunday’s publication.”²⁴

²³ <http://www.spiegel.de/international/business/falsified-emissions-scandal-push-volkswagen-to-limits-a-1055897.html>.

²⁴ <http://mobile.reuters.com/article/idUSKCN0RX0GQ20151004>. Pötsch’s accession to the VWAG Board has been criticized. Hans-Christoph Hirt, a director of Hermes Equity Ownership Services, an adviser to pension fund investors in companies including Volkswagen, said the appointment created a “serious conflict of interest”: “[Pötsch] was a key VW executive for more than a decade and under German law the management board has a collective responsibility . . . The lawyers will surely demand that he recuse himself from any supervisory board meetings when management’s role is discussed.”

16. As explained below, and contrary to the suggestions of some of Volkswagen's spokespersons, the unlawful conduct here was not the action of renegade lower-level employees. It was instead the product of a concerted scheme by top executives at Volkswagen to save costs through use of the TDI technology, break into the United States diesel passenger car market by concealing from regulators and the public the inability of cars using that technology to meet federal and state emissions standards, market the TDI cars through an elaborate seven-year long campaign of false advertising and lying to state and federal officials, and thereby obtain a monopoly share of the United States Clean Diesel passenger car market.

17. The German periodical *Bild am Sonntag* revealed that Robert Bosch GmbH ("Bosch"), the supplier of some components of the emissions control system, used by Volkswagen in TDI diesel vehicles, also supplied Volkswagen with diesel software for test purposes. Bosch reportedly told VWAG in 2007 that using that software in vehicles on the road would be illegal.²⁵ Similarly, *Süddeutsche Zeitung* has reported that Neusser had ignored least one Volkswagen engineer's warnings over "possibly illegal" practices in 2011.²⁶ Spiegel Online reported that groups within Volkswagen knew of potential issues as far back as 2005 or 2006.²⁷ Olaf Lies, a VWAG Board member, has stated publicly that **“[t]hose people who allowed this to happen, or who made the decision to install this software—they acted criminally. They must take personal responsibility.”**²⁸ (Emphases added).

<http://www.cnbc.com/2015/10/04/volkswagens-uniquely-awful-governance-at-fault-in-emissions-scandal.html>.

²⁵ <http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>.

²⁶ <http://www.sueddeutsche.de/politik/abgas-affaere-vw-topmanager-schwer-belastet-1.2669920>.

²⁷ <http://www.spiegel.de/wirtschaft/unternehmen/volkswagen-aufsichtsrat-lies-macht-managern-vorwuerfe-a-1055381.html>.

²⁸ <http://www.bbc.com/news/business-3439.7426>.

18. As discussed in further detail below, Volkswagen has set aside the inadequate sum of 6.5 billion Euros (approximately \$7.2 billion) to deal with the fallout from this fraud. Numerous countries across the world are investigating the matter and here, in the United States, probes are being conducted by the United States Department of Justice (“DOJ”), a coalition of state attorneys general (“AGs”), and members of the United States House of Representatives. The EPA has ordered a recall.

II. THE PARTIES.

A. Plaintiffs.

19. Plaintiffs Maria Bourn (“Bourn”) and David Watson (“Watson”) are residents of South San Francisco, California. Bourn is a lawyer in San Francisco. Watson is a teacher. In 2015, Bourn and Watson, who are married, purchased a certified, pre-owned 2010 Model Year Jetta SportsWagen from Stevens Creek Volkswagen in San Jose, California. Stevens Creek Volkswagen is a Volkswagen Authorized Dealer. Plaintiffs purchased the SportsWagen in reliance on Volkswagen’s representations that the car was an environmentally-friendly “clean diesel” vehicle that was highly efficient, high-performance, and fun to drive. They would not have purchased the vehicle in the absence of Volkswagen’s misrepresentations about the car’s environmental impact, its fuel efficiency, and performance.

20. Plaintiff Mark Schumacher (“Schumacher”) resides in Gainesville, Virginia. In 2012, he purchased a 2012 Model Year Volkswagen Passat SE TDI. Schumacher purchased the Passat from Lindsay Volkswagen in Sterling, Virginia. That company is a Volkswagen Authorized Dealer. Plaintiff Schumacher purchased the Passat in reliance on Volkswagen’s representations that the car was an environmentally-friendly “clean diesel” vehicle that was highly efficient, high-performance, and fun to drive. He would not have purchased the vehicle in the absence of Volkswagen’s misrepresentations about the car’s environmental impact, its fuel efficiency, and performance.

21. Plaintiff Stephen Verner (“Verner”) is an architect and resident of Oakland,

California. In 2013, he purchased a TDI Golf four door from Royal Motor Sales in San Francisco, California. Royal Motor Sales is an Authorized Volkswagen Dealer. Verner purchased the Golf in reliance on Volkswagen's representations that the car was an environmentally friendly "clean diesel" vehicle that was highly efficient, high-performance, and fun to drive. He would not have purchased the vehicle in the absence of Volkswagen's misrepresentations about the car's environmental impact, its fuel efficiency, and performance.

B. Defendants.

22. Defendant VWAG is a car corporation organized and existing under German law, with its principal place of business in Wolfsburg, Germany. VWAG is the parent company of Defendants VWoA and Audi.

23. Defendant Audi AG is a car corporation organized and existing under German law, with its principal place of business in Ingolstadt, Germany. Audi was created when VWAG merged two of its companies, Auto Union and NSU Motorenwerke AG. Audi is a 99.55%-owned subsidiary of the Volkswagen Group. Audi is now Volkswagen's luxury vehicle brand, and uses the slogan "Truth in Engineering".

24. Defendant the Volkswagen Group of America, Inc. is a corporation organized and existing under New Jersey law. Its headquarters are in Herndon, Virginia. The Volkswagen Group of America, Inc. is a wholly-owned subsidiary of VWAG. It is one of the world's largest producers of passenger cars. It sells the Beetle, Beetle Convertible, CC, Eos, e-Golf, Golf, Golf GTI, Golf SportWagen, Jetta, Passat, Tiguan, and Touareg vehicles through Volkswagen Authorized Dealers located in the United States. Volkswagen Group of America, Inc.'s operations in the United States include research and development; parts and vehicle processing; parts distribution; sales, marketing and service offices; financial service centers; and manufacturing.

25. Defendant Volkswagen of America, Inc. is owned and operated by the Volkswagen Group of America, Inc. and sells Volkswagen vehicles in the United States. Its United States headquarters are at the same address as Volkswagen Group of America, Inc. in Herndon, Virginia.

26. Defendant Audi of America, LLC is a subsidiary of Audi AG that sells Audi vehicles in the United States. Its United States headquarters are at the same address as Volkswagen Group of America, Inc. in Herndon, Virginia.

III. JURISDICTION AND VENUE.

27. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332(d), 1337(a) and 1367. This court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

28. Venue is proper in this judicial district and in the Alexandria Division thereof pursuant to 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b) and (c), in that at least one of the Defendants resides in this judicial district, is licensed to do business or is doing business in this judicial district.

IV. TRADE AND COMMERCE.

29. Approximately 482,000 Class Vehicles have been sold or leased in the United States in a continuous and uninterrupted flow of interstate commerce and foreign commerce during the last seven years, including through and into this judicial district. The business activities of the Defendants substantially affected interstate trade and commerce in the United States and caused antitrust injury in the United States.

V. FACTUAL ALLEGATIONS.

A. Automobile Emissions Regulations in the United States.

30. Congress enacted the first major Clean Air Act (“CAA”) and established the EPA in 1970. The CAA, amended in 1975 and 1990, requires vehicle manufacturers to certify to the EPA that their cars and trucks will meet applicable federal emission standards.²⁹ The EPA administers a certification program to ensure that every vehicle complies with its emission standards. EPA-issued certificates of conformity are required for every vehicle sold in the United States, and the EPA must approve every vehicle entering United States commerce. In these

²⁹ <http://www2.epa.gov/laws-regulations/summary-clean-air-act>.

certification efforts, the EPA relies on test data submitted by automobile manufacturers, which submit the vehicles to the agency's testing procedures in their own laboratories. The EPA audits a small fraction of the new vehicles each year to ensure compliance.³⁰

31. The Class Vehicles, like any other car sold in the United States, were required to satisfy emission standards for certain air pollutants, including NOx. 40 C.F.R. §86.1811-4; Clean Air Act §101(b)(1) – (2), 42 U.S.C. §7401(b)(1)(2).

32. Section 203(a)(3)(b) of the CAA prohibits the manufacture, selling, or installation of any device that bypasses, defeats or renders inoperative a required element of a vehicle's emissions control system. 42 U.S.C. §7522(a)(3)(b). Section 203(a)(10) of the same statute also prohibits the sale of motor vehicles or engines that are not covered by valid certificates of conformity with applicable emissions standards. 42 U.S.C. §7522(a)(1). The regulatory requirements for defeat devices are set forth in 40 C.F.R. Part 86.

33. The EPA has been rigorous in punishing automobile manufacturers or engine makers that utilize defeat devices. For example, in late 1995, it entered into a \$45 million dollar settlement with General Motors Corporation regarding the use of defeat devices on 470,000 Cadillac cars.³¹ Likewise, in August of 1998, it fined Honda \$267 million and Ford \$7.8 million for selling vehicles equipped with defeat devices that prevented emission control systems from working properly.³² Similarly, in October of that year, it and the DOJ fined seven truck and heavy duty equipment manufacturers \$83.4 million for engaging in similar conduct.³³

³⁰ <http://www.autonews.com/article/20151004/OEM11/310059955/vw-emissions-violations-put-self-certification-under-new-scrutiny>.

³¹ http://www.autosafety.org/sites/default/files/imce_staff_uploads/Cadillac%20%2445%20Million%20Defeat%20Device%20Penalty%2011-31-95.pdf.

³² http://www.autosafety.org/sites/default/files/imce_staff_uploads/defeat.pdf

³³ <http://www2.epa.gov/enforcement/cummins-engine-company-diesel-engine-clean-air-act-settlement>.

34. Volkswagen was or should have been aware of these precedents. Indeed, the company itself is a recidivist violator of the CAA. In July of 1973, the EPA referred to DOJ for legal action a claim that defeat devices were installed on 1973 Volkswagens. A copy of that referral is attached as Exhibit 3 to this complaint. The matter was settled for \$120,000 in March of 1974.³⁴ Similarly, in June of 2005, Volkswagen entered into a consent decree with DOJ whereby it paid a \$1.1 million penalty concerning its failure to notify the EPA of emissions defects in certain vehicles manufactured at its facility in Mexico.³⁵ A copy of that decree is attached as Exhibit 4 to this Complaint.

35. CARB is a department of the California Environmental Protection Agency. It was created in 1967. California is the only state permitted to have such a regulatory agency, because it was created prior to the enactment of the CAA. CARB's mission is to "[t]o promote and protect public health, welfare and ecological resources through the effective and efficient reduction of air pollutants while recognizing and considering the effects on the economy of the state."³⁶

36. The EPA introduced phased in Tier 2 emissions standards from 2004 to 2009. California has similar standards in its CA LEV II standard. The Tier 2 Bin rating system applied to all passenger vehicles regardless of fuel type. Tier 2 Bin 5 standards--the ones applicable to the Class Vehicles--imposed an emission rate for NOx of 0.07 grams per mile.³⁷

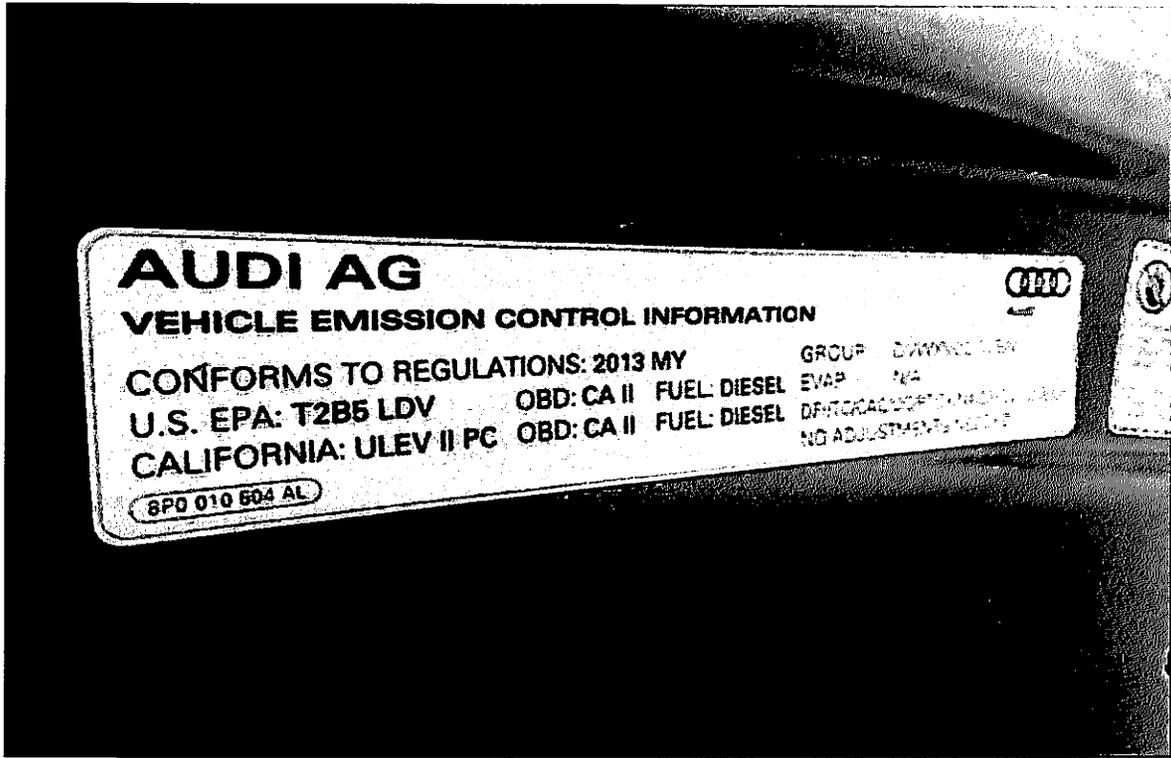
37. New cars that are sold bear stickers indicating that they are EPA-and/or CARB compliant. Here is a photograph of such a sticker on the inside of the hood of a TDI Audi A3, one of the Class Vehicles.

³⁴http://www.autosafety.org/sites/default/files/imce_staff_uploads/VW%20Defeat%20Device%20%24120%2C00%20fine%203-12-74%20Pr.pdf.

³⁵ http://www.autosafety.org/sites/default/files/imce_staff_uploads/volkswagen-cd.pdf.

³⁶ <http://www.arb.ca.gov/html/mission.htm>.

³⁷ <http://www.nctcog.org/TRANS/air/vehicles/tech/compliance/index.asp>.



And here is a similar sticker for a 2013 TDI Volkswagen Golf:

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VOLKSWAGEN

VEHICLE EMISSION CONTROL INFORMATION

Conforms to regulations:

2013 MY

U.S. EPA:

T2B5

LDV

OBD: CA II

Fuel: Diesel

California:

ULEV II

PC

OBD: CA II

Fuel: Diesel

No adjustments needed.

DF/CA 100000 MILES/100000 HOURS/100000 HOURS/100000 HOURS

Group:

DVWXV02

Evap:

N/A

01251010

Through these types of notice, Volkswagen was representing to customers that the Class Vehicles complied with federal and state emissions laws. This was an outright lie.

B. Diesel Cars And Control of NOx Emissions.

38. Diesel-powered cars, like gasoline-powered cars, must also meet the emissions standards established by the EPA and CARB. With diesel-powered engines, car manufacturers must use different--and more expensive--emission control systems than are used in gasoline-powered cars.

39. Diesel fuel has a greater energy density than gasoline. It converts heat into energy more efficiently than gasoline, sending less heat out of the tailpipe than gas-powered vehicles. Because it has greater energy density, diesel also is more efficient: diesel vehicles can get up to 30% more miles per gallon than similar gasoline-powered cars. In addition, because of their higher compression, diesel engines can generate a lot of torque, providing strong acceleration and additional power needed for towing.

40. While diesel vehicles have certain advantages over gasoline, they also have some disadvantages. Because diesel fuel is heavier and oilier than gasoline, it can generate more pollution. While diesel engines emit lower amounts of carbon monoxide than gasoline-powered engines, they emit more NOx.

41. Diesel fuel exhaust has been recognized by the World Health Organization to be a carcinogen for humans.³⁸

42. Automakers have faced significant challenges in controlling NOx emissions sufficiently to meet environmental standards, particularly with smaller vehicles, and particularly in the United States, which has some of the strictest emission controls in the world. The website of greencongress.com explains the two types of approaches diesel automobile manufacturers have used to deal with NOx emissions:

³⁸ http://www.iarc.fr/en/media-centre/pr/2012/pdfs/pr213_E.pdf.

Broadly, there have been two catalytic approaches used to reduce exhaust NO_x: urea-based selective catalytic reduction (SCR) and lean NO_x trap (LNT) catalysts.

--The urea-SCR (urea=AdBlue) approach requires on-board storage of the reductant fluid which is introduced into the exhaust upstream of the SCR catalyst. It is then converted to ammonia which interacts with NO_x on the SCR catalyst to form water and nitrogen.

--LNT technology utilizes fuel from the vehicle and advanced engine controls to enable periodic operation of the engine at rich air-to-fuel ratios to produce oxygen-depleted exhaust suitable for reducing NO_x stored on the LNT catalyst surface.³⁹

43. The article indicates that Volkswagen had planned to use both technologies as of 2007, but elected to go with the LNT approach (which it referred to as TDI). As explained below, the deciding factor was apparently cost. Because of the extra equipment (including a urea tank) and technology required to clean the NO_x emissions from the diesel exhaust, SCRs can add significantly to the cost of producing the engine. They also make diesel cars heavier than they otherwise would be, thus potentially decreasing fuel efficiency, torque and power.

44. Honda, which sells diesel cars in markets other than the United States, never tried to sell them here. That is because, according to Honda's research, "[t]he market would not bear the costs of doing diesel correctly." In order to meet the stringent United States emissions standards, Honda would have had to add costly emissions controls to every diesel model, which would make them more expensive than gasoline-powered competitors. "At such a high premium, customers simply wouldn't buy them."⁴⁰

C. Volkswagen's Decision To Use TDI Technology.

45. Volkswagen has been selling cars in the United States since 1949, when it introduced the iconic Volkswagen Beetle. Although it was for many years the top-selling imported car in the United States, Japanese imports overtook Volkswagen and other European imports in

³⁹ <http://www.greencarcongress.com/2015/09/20150921-vw21.html>.

⁴⁰ <http://mashable.com/2015/09/27/vw-dieselgate/#2VosDbcL7iqT>.

the 1990s.

46. The decisive factor in the decision to use TDI technology in 2007-08 was the appointment of Winterkorn as CEO of VWAG in January of 2007. Winterkorn was involved in overseeing research and development and had that responsibility at the time he resigned as CEO. In 1995, he took over as the head of Volkswagen Group Product management and a year later, he assumed the role of Member of the Board of Management for “Technical Development” at the Volkswagen brand. He assumed a similar role when he became Chairman of the Board of Management at Audi.⁴¹

47. Before Winterkorn took over as VWAG’s CEO on January in 2007, Volkswagen had partnered with Bosch and Daimler to explore the use of a diesel emissions control system called BlueTec.⁴² BlueTec was a technology developed by the latter two companies and championed by Wolfgang Bernhard (“Bernhard”), former head of the Volkswagen brand and a former Daimler executive. BlueTec was an SCR technology; it required the use of a liquid urea tank, so that urea could be sprayed onto the emissions in order to neutralize the NOx. The urea tank not only takes up space and adds weight (disadvantages that are especially acute in the market for small, fuel-efficient cars), but also requires the owner to refill the tank, making the diesel engine more inconvenient than a traditional gasoline-powered car. When Bernhard left the company after Winterkorn took control, the BlueTec technology was scrapped for smaller vehicles. Volkswagen only began using a form of SCR technology on a few of its smaller vehicles in 2012.

48. *Automotive News* describes the sequence of events:

Bild am Sonntag said the roots of the crisis were planted in 2005 when then-VW brand Chief Wolfgang Bernhard wanted VW to

⁴¹ See

http://www.volkswagenag.com/content/vwcorp/content/en/the_group/senior_management/winterkorn.html.

⁴² For the source of this information, see http://www.nytimes.com/2015/09/27/business/as-vw-pushed-to-be-no-1-ambitions-fueled-a-scandal.html?_r=0.

develop a new diesel engine for the U.S. market. Bernhard recruited Audi engineer Rudolf Krebs who developed a prototype that performed well in tests in South Africa in 2006, the paper said.

Bernhard and Krebs argued that the only way to make the engine meet U.S. emission standards was to employ in the engine system an AdBlue urea solution used on larger diesel models such as the Passat and Touareg, according to the report.

This would have added a cost of 300 euros (\$335 in today's U.S. dollars) per vehicle -- a sum that VW finance officials said was too much at a time when a companywide cost-cutting exercise was under way.

Bernhard left VW in January 2007 before the diesel engine went into production. Krebs was moved to another role when Martin Winterkorn became VW Group and brand CEO in 2007.

Winterkorn, Audi's former CEO, asked Audi development boss Ulrich Hackenberg and Audi engine boss Wolfgang Hatz to move to VW's Wolfsburg headquarters and continue development work on the engine, *Bild am Sonntag* said.

The engine then ended up in VW Group diesels with its engine software manipulated to fool diesel emissions tests in the U.S.⁴³

Hatz and Hackenberg, as noted above, were two of the executives whom VWAG recently suspended.

49. Engineers at Volkswagen had been looking at an alternative to BlueTec technology, an alternative that ultimately evolved into the TDI "Common Rail" system. In 2006, Richard Dorenkamp, head of Volkswagen's diesel engine development, gave a presentation in Detroit. He described the TDI system Volkswagen engineers developed and how it could be used in small cars and meet increasing US demands for fewer emissions.⁴⁴ Volkswagen's TDI Clean Diesel pollution

⁴³ <http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>. Winterkorn was generally very concerned about the costs associated with developing eco-friendly automotive engines. As he said at the 2014 Paris auto show, "[c]limate protection is not available free of charge. Every gram of reduction in [tailpipe] CO2 costs us 100 million euros. Every gram!" <http://blog.caranddriver.com/vws-winterkorn-to-greens-so-get-off-our-backs-already/>.

⁴⁴ http://www1.eere.energy.gov/vehiclesandfuels/pdfs/deer_2006/session7/2006_deer_dorenkamp.pdf.

control technology differed from the SCR technology used by other manufacturers to control NOx emissions. The greencarcongress.com article cited earlier describes it in detail. Instead of having a urea tank, the TDI Clean Diesel cars technology used a trap to collect NOx. While saving the space, weight and cost required by the urea tank in the SCRs, Volkswagen's TDI Clean Diesel technology--when it was operational--required additional use of fuel, thus degrading both gas mileage and performance. The trap was controlled by a computer module that could save fuel by allowing more pollutants to pass through the exhaust system.

50. In June of 2007, six months after Winterkorn took over as CEO of VWAG, Volkswagen issued a report entitled "Power Train and Fuel Strategy--The Path To The Future."⁴⁵

It stated:

In the first stage on the path to this independence, it will be important to utilize existing fossil fuels as efficiently as technically possible. Volkswagen is putting its stamp on this phase with vehicles such as the BlueMotion models, a universally fuel-efficient fleet of TDI engines, highly efficient and unique TSI engines, successful natural gas vehicles (EcoFuel) and a lineup of models that still leaves room for automotive dreams. Very soon these fundamental technologies will be further refined. New powertrains, including an engine concept developed for use in the USA, under the working title "BlueTDI", are already in the prototype stage. These engines will fulfill the toughest emissions laws in the world – even the so-called "Tier2 Bin5" in California, one of the most stringent emissions standards in the world. (Emphases added).⁴⁶

51. Volkswagen had planned to introduce the Jetta TDI Clean Diesel in the United States earlier than it eventually did. In November of 2007, it was reported as follows:

⁴⁵ It can be found at

http://www.volkswagenag.com/content/vwcorp/info_center/en/themes/2007/06/powertrain_and_fuel_strategy.html.

⁴⁶ In 2008, five VWAG engineers published a two-part article in the May and June issues of *MTZ* magazine saying they had resolved the issue of how to best control emissions and could now meet California standards through the use in part of a new on-board diagnostics system. Similarly, Achim Freitag, a testing engineer in Volkswagen's diesel development department, touted the new engine in a speech given later that year. *See* <http://www.pbs.org/wgbh/nova/next/tech/volkswagen-diesel-emissions/>.

A problem with the emissions system in Volkswagen's new Jetta TDI will delay the launch of the diesel sedan for about six months. The car is critical to VW's plans to get back on track in the United States.

VW spokesman Keith Price confirmed that the delay will be announced this week at the Los Angeles auto show. Price would not give specifics about the technical problem, but he said it has been fixed.

The technical changes engineers made to solve the problem mean the car must go through emissions testing and validation again, Price said.

VW dealers have been without a new diesel car to sell since last spring. Production of the new model, which will be sold in all 50 states, was scheduled to start in January. The car will be built in Puebla, Mexico.

U.S. sales originally were expected to begin in early spring, Price said. Now sales won't start until later in the summer."

"Sure, they're disappointed," Price said of dealers who have learned of the delay.

Price said there is a lot of pent-up demand from loyal VW diesel buyers for the next-generation Jetta, which has a new engine built in Germany and a new diesel fuel injection system.

"They're disappointed, but they see the point that this car has to be perfect," Price said of the dealers, adding, "They recognize the importance of this not only for their stores, but for the VW brand."

A fleet of about 40 Jetta TDIs is undergoing testing as part of the validation procedure.⁴⁷

52. What apparently happened is that the TDI technology failed initially to withstand United States emissions testing. The decision was made to delay the launch of the vehicle and activate the algorithm that functioned as a defeat device in the software management system. This is consistent with the timing of the letter from Bosch described above that raised the illegality of such a tactic. It is also consistent with recent revelations that appeared in the October 4 issue of *Bild am Sonntag*:

⁴⁷ <http://www.cleanmpg.com/forums/showthread.php?t=7254>.

An internal review at Volkswagen AG shows the decision to install software that reduces diesel emissions in testing was made just before serial production of the company's EA 189 engine [used in many of the Class Vehicles], German tabloid Bild am Sonntag said.

Bild said the software was first installed in its diesel engines in 2008, shortly before the EA 189 was mass produced. The move was taken because there was no way at the time to reconcile meeting emission standards within the targeted cost of the engine, the tabloid said in an advance release of the article to be published Sunday. Otherwise the company would have had to abandon the introduction of the engine, development of which was begun in 2005, the newspaper said.⁴⁸

53. The 2009 Model Year TDI Jetta was introduced and passed the Tier 2 Bin 5 emissions test with flying colors. A Reuters article describes its successful launch:

Volkswagen had heavily marketed what it called "clean diesel" engines starting in 2008 with the 2009-model Jetta TDI. It appeared to have found a sweet spot between high-performance and fuel-efficiency with a zippy, fun-to-drive car that topped 40 miles per gallon in highway driving. Named "Green Car of the Year" at the Los Angeles auto show in 2008, the Jetta TDI was seen as a breakthrough in a country where diesel passenger cars occupy a tiny niche compared with Europe, where they are about half of the market.

"It's not your grandfather's diesel," Krause said in a September 2008 presentation to U.S. regulators, according to a video of the remarks.

[Norbert] Krause [head of VWoA's environmental office until 2009] and other VW officials promised a diesel that would meet pollution laws in all states, including California where diesel engines had long been associated with smog and cancer-causing soot.

By that point, VW and other automakers had lobbied for almost a decade for regulators to give diesel another chance. In 2000, VW and other companies with an interest in promoting diesel, including Mazda, formed the Diesel Technology Forum to lobby for increased use in the United States as a way to reduce reliance on imported oil. In 2005, an energy bill signed by President George W. Bush offered tax credits for diesel buyers. That gave the first wave of diesel Jetta buyers an income tax credit of \$1,300 each.

⁴⁸ <http://www.marketwatch.com/story/vw-began-using-emissions-software-in-2008-report-2015-10-04>.

In 2009, after the new Jetta went on sale, VW dealers initially sold out, including in California where regulations had effectively shut the market to diesels earlier in the decade.⁴⁹

54. As noted in the article, *Green Car Journal* gave it the 2009 Green Car of the Year award and gave the TDI Audi A3 the 2010 Green Car of the Year Award.⁵⁰ Those awards have been rescinded in light of the present scandal.⁵¹ The TDI Clean Diesels were a resounding success and VWoA sold many units.⁵² As recently as its 2014 sustainability report, VWAG crowed about how “[t]he Volkswagen Group has a long tradition of resolute commitment to environmental protection” and how it intended to “put our creative powers to good use for the benefit of the people and the environment.”⁵³

55. At conferences and in published papers, Volkswagen extolled the efficiency and low emissions of its Clean Diesel technology.⁵⁴ And commentators agreed. One stated that Volkswagen was “the only company to have mastered the new emissions regulations using a compact, inexpensive treatment system. It allowed them to roll out diesel engines in one small car after another at relatively low prices.”⁵⁵ Volkswagen’s competitors had long wondered how Volkswagen could produce a clean diesel engine at such an affordable price. As Robert Lutz,

⁴⁹ <http://uk.reuters.com/article/2015/09/24/uk-usa-volkswagen-deception-insight-idUKKCN0RO2J720150924>.

⁵⁰ https://en.m.wikipedia.org/wiki/Green_Car_of_the_Year.

⁵¹ <http://www.autoblog.com/2015/09/30/vw-stripped-of-green-car-of-the-year-awards-for-jetta-a3-diesel/>.

⁵² The chronicle of its United States sales is found here: <http://www.ibtimes.com/volkswagen-diesel-scandal-heres-how-bad-volkswagen-sales-were-company-was-caught-2114603>.

⁵³ <http://www.autoblog.com/2015/09/30/vw-stripped-of-green-car-of-the-year-awards-for-jetta-a3-diesel/>.

⁵⁴ See, e.g., <http://www.sae.org/events/gim/presentations/2009/norbertkrause.pdf>; http://cleandieseldelivers.com/media/Douglas-Skorupski-VWoA_DTF_March2015.pdf.

⁵⁵ <http://www.pbs.org/wgbh/nova/next/tech/volkswagen-diesel-emissions>.

former vice chairman of General Motors Corporation, recounted: “I kept asking our engineers: ‘What’s wrong with you guys? VW seems able to do it.’ I said, ‘Are they magicians or something?’ The engineers said they couldn’t answer that question.”⁵⁶ Now, they have their answer. Volkswagen cheated.

56. The competitive advantages of cheating on emissions have now become clear. “Manipulating emissions results allowed Volkswagen to keep down engine costs in a ‘clean diesel’ strategy that was popular in Europe and at the heart of a drive to improve U.S. results.”⁵⁷ As an article in the *New York Times* put it, “[d]isabling the emissions controls brought major advantages, including much better mileage—a big selling point in Volkswagen’s push to dominate in America.”⁵⁸ These sales were part of the reason VWAG was able to surpass Toyota as the world’s biggest automaker in 2015, as noted above. And they were sales built upon lies.

57. This systemic attitude of winning at all costs in spite of noncompliance with national environmental regulations is part of the corporate culture of Volkswagen, as explained at length in a September 24, 2015 *New York Times* article:⁵⁹

There is a long tradition of scandal and skulduggery in the auto industry, but few schemes appear as premeditated as Volkswagen’s brazen move to use sophisticated software to circumvent United States emissions standards.

That such a thing could happen at Volkswagen, Germany’s largest company and the world’s largest automaker by sales — 202.5 billion euros last year — has mystified consumers and regulators around the world. But given Volkswagen’s history, culture and

⁵⁶ <http://www.freep.com/story/money/cars/2015/09/26/vw-cheat-emissions-diesel-engine-fallout/72612616/>.

⁵⁷ <http://www.reuters.com/article/2015/09/30/us-volkswagen-emissions-plan-idUSKCN0RT0OL20150930>.

⁵⁸ <http://mobile.nytimes.com/2015/09/27/business/as-vw-pushed-to-be-no-1-ambitions-fueled-a-scandal.html?referer>.

⁵⁹ http://www.nytimes.com/2015/09/25/business/international/problems-at-volkswagen-start-in-the-boardroom.html?_r=1.

corporate structure, the real mystery may be why something like this didn't happen sooner.

"The governance of Volkswagen was a breeding ground for scandal," said Charles M. Elson, professor of finance and director of the John L. Weinberg Center for Corporate Governance at the University of Delaware. "It was an accident waiting to happen." The company, founded by the Nazis before World War II, is governed through an unusual hybrid of family control, government ownership and labor influence. Even by German standards, "Volkswagen stands apart," said Markus Roth, a professor at Philipps-University Marburg and an expert in European corporate governance. "It's been a soap opera ever since it started."

I spoke this week to a longtime former senior Volkswagen executive, who agreed that a scandal, especially one involving emissions, was all but inevitable at Volkswagen. He cited the company's isolation, its clannish board and a deep-rooted hostility to environmental regulations among its engineers.

The former executive, who spoke on the condition of anonymity because he now works at a competing global automaker, said that Wolfsburg, where Volkswagen is based in Lower Saxony and the city with the highest per capita income in Germany, is even more remote and isolated than Detroit was in its heyday. "The entire economy is automotive," he said. "People have a completely uncritical view of cars and their impact on the environment because they all make a living from the industry."

The Volkswagen board has been especially slow to move on environmental issues, investing less in electric and hybrid engine technology than industry leaders.

"There's an attitude among the German public that it's very unfair for the U.S. to target the auto industry over emissions," Professor Roth said. "If you have electric cars and a coal-fired plant producing the electricity, you gain nothing."

The former Volkswagen executive said Volkswagen's engineer-driven culture takes the notion even further. He said the engineers felt that the politicians were guilty of rank hypocrisy, especially in the United States, also grumbling that electric cars make no sense as long as power plants are burning fossil fuels.

"There's an attitude of moral superiority there," he said. "The engineers think they know best."

That Volkswagen is nonetheless obliged to obey applicable

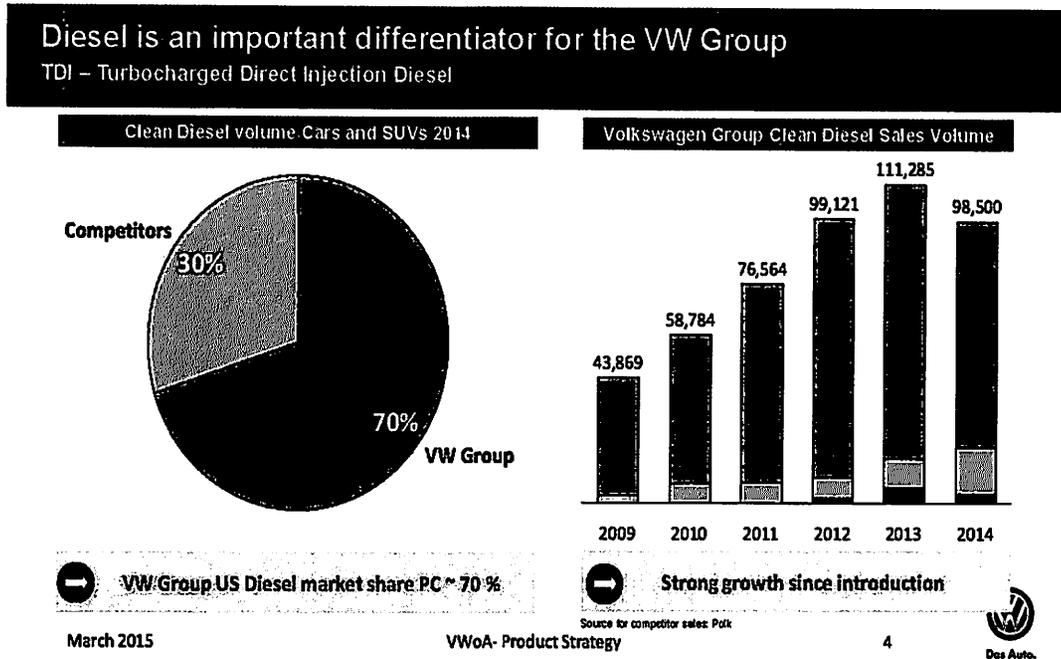
environmental laws, he said, is a notion likely to fall on deaf ears in Wolfsburg, especially compared to demands to be No. 1 in sales. (The motive for the software evasion is widely believed to have been to increase sales of diesel-powered cars in the United States.)

Thus, executives and engineers at Volkswagen were clearly unhappy with United States automotive emissions standards and were all too willing to sacrifice those standards (and their obligations under United States antitrust laws) in order to ensure that their company became the number one automaker in the world. The current scandal involving Volkswagen Clean Diesel TDI vehicles is a direct result of that arrogant intention to flout United States environmental laws. It is also a direct result of what has been described by one German executive as Volkswagen's "uniquely awful" corporate governance.⁶⁰

D. The Clean Diesel Car Market.

58. Volkswagen's illegal conduct in this country occurred in the Clean Diesel passenger car market in the United States (the "Clean Diesel Car Market"), which can be viewed as a market of its own or as a submarket of passenger cars sold in this country. This fact was confirmed in a presentation by Douglas Skorupski ("Skorupski"), Manager of Power Train Strategy for VWoA, given to the Diesel Technology Forum ("DTF") in March of 2015:

⁶⁰ <http://www.cnbc.com/2015/10/04/volkswagens-uniquely-awful-governance-at-fault-in-emissions-scandal.html>.



59. Thus, VWoA clearly views clean diesel cars as a distinct market and Volkswagen’s TDI technology as a factor that allowed it to obtain a monopoly share of that market.⁶¹ It distinguished Clean Diesel cars from gasoline/electric hybrid cars based on superior performance:

⁶¹ The presentation can be found at http://cleandieseldelivers.com/media/Douglas-Skorupski-VWoA_DTF_March2015.pdf. Bosch has similarly identified a distinct Clean Diesel car category: <http://www.low-carbonfuels.com/pdfs/acte2011presentations/Day1/Breakout1/LightDuty/ACT2011-Breakout1-FreitagAlexPresentation150.pdf>. And the EPA has noted that “Clean diesel” refers to a three-part emissions control system that combines cleaner diesel fuel, advanced engines and effective emissions control technology.

“[o]ne way Volkswagen aimed to achieve its lofty goal was by betting on diesel-powered cars — instead of hybrid-electric vehicles like the Toyota Prius--promising high mileage and low emissions without sacrificing performance.”⁶² Similarly, a survey conducted by Strategic Vision for Volkswagen found that customers of diesel and hybrid vehicles are very different and there is “very little crossover from one to the other.”⁶³ The same article noted that Clean Diesel TDI and hybrid buyers differed demographically; the latter were “were just 51 percent male, 78 percent of them were married, 89 percent had no kids in the household, and their average age was 61”, while the former “included far more men than women[,] [f]ewer of them were married, but more of them had children in the house, and they were fully 17 years younger, with an average age of 44.” Likewise, a Volkswagen Clean Diesel IQ survey found that diesel car customers are highly aware of the benefits of clean diesel technology in contrast to hybrid and gasoline car customers. Furthermore, 94% of diesel customers will purchase clean diesel cars again while only 26% of hybrid and gasoline car customers will consider clean diesel cars for their next purchase.⁶⁴ All of this indicates little cross-elasticity of demand between hybrid vehicles and Clean Diesel vehicles.

60. Indeed, the major European competitors of Volkswagen in the Clean Diesel Car Market belong, along with Volkswagen, to an organization that is devoted to extolling the benefits of Clean Diesel cars.⁶⁵

61. BloombergBusiness noted that consumers are willing to pay a substantial premium

⁶² <http://mobile.nytimes.com/2015/09/27/business/as-vw-pushed-to-be-no-1-ambitions-fueled-a-scandal.html?referer>.

⁶³ http://www.greencarreports.com/news/1080201_vw-diesel-buyers-hybrid-buyers-both-want-fuel-economy-but-beyond-that.

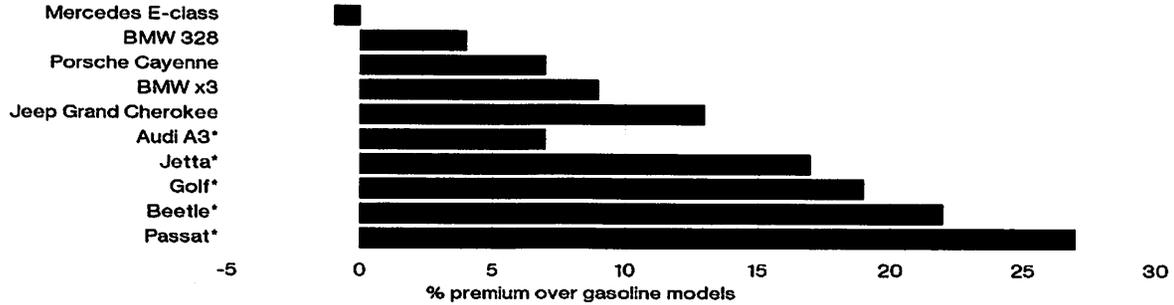
⁶⁴ <http://www.autosphere.ca/fleetdigest/2013/04/01/volkswagen-surveys-diesel-drivers/>. *See also* <http://www.cmu.edu/gdi/docs/diesel-and.pdf> (noting many key differences between diesel and hybrid car customers).

⁶⁵ <http://www.clearlybetterdiesel.org/index.html#cleanDiesel>.

for Clean Diesel vehicles over those of its competitors.⁶⁶

Diesel Power

Relative to gas models, Volkswagen's dirty diesels were sold for large premiums.



* VW models targeted by the EPA

Source: BMW, Daimler, Fiat-Chrysler, Volkswagen

Bloomberg

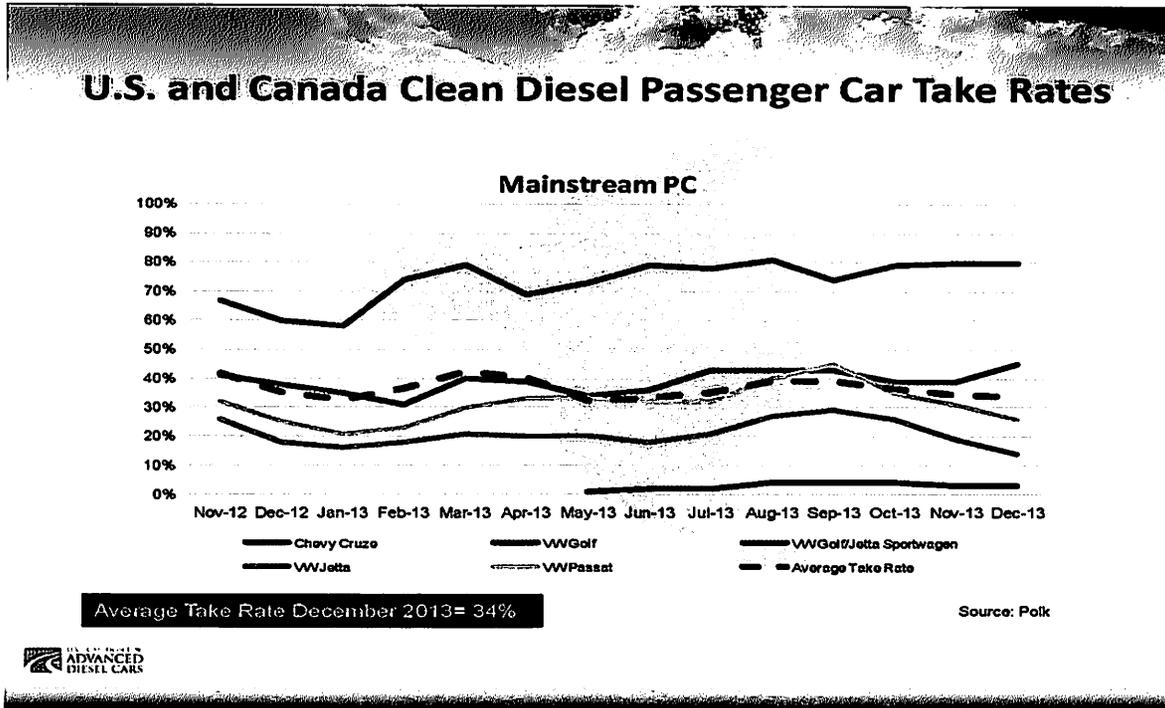
62. As the BloombergBusiness article goes on to explain:

The math on diesel has never been tidy. The additional mileage is great, but unless one drives a lot, it doesn't really cover the added expense for the engine and for the fuel itself. At current gas prices, the diesel premium on the Passat—some \$5,755—would buy enough gas to drive the gas-burning model for about 88,000 miles. **For the majority of diesel drivers, the factor that probably swung the decision was the apparent environmental benefit. The green aspect was the fulcrum.** (Emphases added).

Thus, Volkswagen's false claims about its TDI technology were a driving factor in the premium prices it charged consumers for such technology. As noted above, VWAG has taken full responsibility for the "economic damage" caused by its illegal conduct.

⁶⁶ <http://www.bloomberg.com/news/articles/2015-09-23/volkswagen-s-other-diesel-ruse-premium-pricing>.

63. A chart contained in a presentation made by CMW Research at the March 2015 DTF conference⁶⁷ underscores the differences in take rates between Volkswagen Clean Diesel cars and those made by its competitors:



64. The price premium for Clean Diesel vehicles is also reflected in this chart showing the price differentials between gasoline-powered models and Clean Diesel models of Volkswagen’s own cars:

| Clean Diesel Price Premium | | | | |
|----------------------------|------------|------------|------------|------------|
| Mode | Base | Mid-Level | Top-Level | Average |
| VW Jetta | \$2,860.00 | \$1,570.00 | \$1,030.00 | \$1,820.00 |
| VW SportWagen | \$5,570.00 | \$1,680.00 | \$0.00 | \$2,416.67 |
| VW Golf | \$2,400.00 | \$1,000.00 | \$1,000.00 | \$1,466.67 |
| VW Golf | \$2,950.00 | \$1,000.00 | \$1,000.00 | \$1,650.00 |
| VW Beetle | \$4,635.00 | \$4,920.00 | \$0.00 | \$3,185.00 |
| VW Beetle | \$4,080.00 | \$530.00 | \$700.00 | \$1,770.00 |
| VW Passat | \$5,755.00 | \$2,845.00 | \$2,135.00 | \$3,578.33 |

⁶⁷ <http://cleandieseldelivers.com/media/Take-Rate-Slides-March-2014.pdf>.

| | | | | |
|---------|------------|------------|------------|------------|
| Audi A3 | \$2,300.00 | \$2,300.00 | \$2,300.00 | \$2,300.00 |
| Average | \$3,818.75 | \$1,980.63 | \$1,020.63 | \$2,273.33 |

E. Volkswagen's False Advertising.

65. Volkswagen, as part of its plan to increase sales and market share in the United States, increased its emphasis on diesel-powered cars and began marketing these cars heavily to the United States public beginning in 2008. It emphasized the TDI Clean Diesel cars' environment-friendly engine, excellent gas mileage, and high-quality performance. In one advertisement (which, as of this writing, was available on Audi's website after the scandal surfaced and is attached as Exhibit 5 to the Complaint),⁶⁸ for example, Volkswagen claimed:

Getting more from less. Audi pioneered TDI® clean diesel engines to deliver more torque, lower fuel consumption and reduce CO2 emissions, compared to equivalent gasoline engines. The result of this revolutionary engineering delivers remarkable performance, while achieving increased fuel economy.

66. Another advertisement by VWAG for Clean Diesel cars asserts that

This ain't your daddy's diesel. Stinky, smoky, and sluggish. These old diesel realities no longer apply. Enter TDI Clean diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We've ushered in a new era of diesel.⁶⁹

This internet advertisement is attached as Exhibit 6 to the Complaint.

67. Volkswagen's advertising relentlessly touted the supposed fuel efficiency and environmental features of its Clean Diesel TDI vehicles. In 2009, Volkswagen introduced its "Meet the Volkswagens" campaign, which promoted "fuel efficiency, green credentials, cost of ownership and safety," and compared Volkswagen's diesel passenger cars to its competitors. According to Tim Ellis, Volkswagen's marketing chief, the goal of this advertising campaign was to "grow the brand in the U.S."⁷⁰ This campaign, among other things, included social media links

⁶⁸

<https://web.archive.org/web/20150928180733/http://www.audiusa.com/technology/efficiency/tdi>

⁶⁹ <https://web.archive.org/web/20150330110301/http://www.vw.com/features/clean-diesel/>.

⁷⁰ <http://abcnews.go.com/Business/story?id=7493781>.

to a blog (tdi.vw.com/tdi), which focused on Volkswagen's TDI clean diesel model.

68. Between 2011 and 2013, Volkswagen spent more than \$2.9 billion annually on advertising world-wide; many of those advertising dollars were directed at the United States public. Volkswagen issued hugely popular videos featuring the Golden Sisters, who purported to debunk the myths about polluting diesel cars.⁷¹ Other videos that were highly successful included a "Truth or Dare" effort started in 2009 that was about "debunking the myths on clean diesel and fueling the passion of existing diesel owners"; a 2009 Audi video that proclaimed "diesel, no longer a dirty word"; and a Passat "being a Mom" video, all of which can be viewed on the *New York* magazine website.⁷² Another well-known video showed German engineers of TDI Clean Diesel vehicles earning their "angel's wings."⁷³

69. Volkswagen also used point-of-purchase displays at the showrooms of Volkswagen Authorized Dealers such as the one depicted below:



⁷¹ <http://blog.caranddriver.com/vws-hilarious-new-tdi-diesel-ads-return-excellent-viral-mileage/>.

⁷² <http://nymag.com/daily/intelligencer/2015/09/vws-clean-diesel-ads-now-make-us-feel-dirty.html>.

⁷³ <https://www.youtube.com/watch?v=fwkPEza9FPw>.

70. As VWoA's Mark Barnes put it, the TDI Clean Diesel cars were "fantastic power train[s]" with "very good fuel economy." Yet "[i]t's also good for the environment because it puts out 25% less greenhouse gas emission than what a gasoline engine would. And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%. So a very very clean running engine. Clean enough to be certified in all 50 states."⁷⁴

71. In television and print advertisements and in social media, Volkswagen strived to present its Clean Diesel TDIs as the environmentally-friendly, fuel-efficient, fun-to-drive and reasonably priced passenger car. As noted above, Volkswagen's sham advertising campaign was a success. Unfortunately, all of these accolades were based on a sham perpetrated by Volkswagen for seven years.

F. Volkswagen's Defeat Device.

72. As noted above, Volkswagen's defeat device is described as a "sophisticated software algorithm" that detects when the car is undergoing emissions testing. The algorithm used information about how the car was being steered, how long the engine ran and atmospheric pressure to "precisely track" the conditions that corresponded to a federal emissions test, according to the EPA. During emissions testing, the software "turns on" the car's full emissions control system in order to pass the test. Under normal driving situations, however, these emissions control systems are *turned off*, allowing the cars to spew as much as 40 times the allowable amount of NOx into the air. As an EPA spokesman noted, the defeat device was "particularly difficult for us to detect."⁷⁵ This ruse went undetected for seven years, although as noted above, Bosch and one

⁷⁴ <http://www.businessinsider.com/volkswagen-preps-for-a-diesel-revolution-2009-10>.

⁷⁵ <http://www.washingtonpost.com/news/wonkblog/wp/2015/09/22/anatomy-of-volkswagons-deception-the-recall-that-never-fixed-any-cars/>. A useful timeline of how the scandal came to light is provided on the website of Cars.com: <https://www.cars.com/articles/vw-diesel-crisis-timeline-of-events-1420681251993/>.

of VWAG's own engineers complained about it to the company.

73. One technology blog has described Volkswagen's defeat device as follows:

The method by which Volkswagen diesel cars were able to thwart emissions tests and spew up to 40X the nitrogen oxide levels set by the Environmental Protection Agency was relatively simple. It was more likely no more than a single line of code used to detect when an emissions test was being performed and place the emissions system in an alternate mode — something as simple as a software "on/off" switch. Volkswagen AG CEO Martin Winterkorn, who stepping down as the result of his company's scandal, has said he had no knowledge of the emissions cheat, but software dev/test audit trails are almost certain to pinpoint who embedded the code and who authorized it. You can actually see who asked the developer to write that code," said Nikhil Kaul, a product manager at test/dev software maker SmartBear Software. "Then if you go upstream you can see who that person's boss was...and see if testing happened...and, if testing didn't happen. So you can go from the bottom up to nail everyone."⁷⁶

74. As also noted above, 482,000 vehicles were described as affected, with over 50,000 in the state of California.⁷⁷

75. In 2013 and again in 2014, the International Council for Clean Transportation ("ICCT") published studies showing serious discrepancies between laboratory and in-use emissions of certain cars, including VW TDI Diesel cars used in Europe.⁷⁸ A decision was made to test American Clean Diesel cars to show that they were success stories; the opposite turned out to be the case. The ICCT, in conjunction with researchers at and West Virginia University's Center for Alternative Fuels, Engines and Emissions ("CAFEE") conducted on-road emissions tests on three vehicles sold in the United States: a 2013 TDI Passat, a 2012 TDI Jetta, and a BMW X5

⁷⁶ <http://developers.slashdot.org/story/15/09/24/1423225/how-did-volkswagen-cheat-emissions-tests-and-who-authorized-it>.

⁷⁷ <http://www.latimes.com/business/autos/la-fi-hy-california-dmv-vw-diesel-20150921-story.html>. This number excludes unregistered vehicles.

⁷⁸ http://theicct.org/sites/default/files/publications/ICCT_LabToRoad_20130527.pdf;
http://www.theicct.org/sites/default/files/publications/ICCT_LaboratoryToRoad_2014_Report_English.pdf

SUV. These researchers found that for the Passat and Jetta, emissions were far higher than the emissions generated in the laboratory by CARB. The Jetta exceeded United States NOx emissions standard by 15 to 35 times, and the Passat by five to 20 times. In laboratory testing by CARB, in contrast, these same vehicles complied with United States NOx emissions standards. The CAFEE report is attached as Exhibit 7 to the Complaint. ICCT brought the information to the attention of CARB and the EPA, who commenced their own investigations and contacted Volkswagen. Volkswagen chalked the discrepancies up to “various technical issues and unexpected in-use conditions”, but agreed in December of 2014 to recall approximately 500,000 vehicles in order to apply a “software patch.”⁷⁹

76. After the remediation, CARB in May of 2015 tested a 2012 TDI Passat on the road and in the laboratory. It found some improvement in in-use NOx emissions, but not enough. An article in the *Philly Voice* describes what happened next.

On July 8, CARB shared its results with VW, but there was no change in Volkswagen's position. Some officials privately questioned whether Volkswagen was deliberately violating the federal Clean Air Act by installing defeat devices -- software programmed to switch engines to a cleaner mode during official emissions testing, according to a person involved in the process.

During normal driving, the software then shuts off, enabling cars to emit as much as 40 times the legal limit of pollutants.

In early August, Oliver Schmidt, who followed [Norbert] Krause and preceded [Stuart] Johnson in VW's U.S. engineering and environmental office, attended a conference in Traverse City, Michigan and told regulators Volkswagen stood by its conclusions that the problem was technical, people involved said.⁸⁰

77. Then, on August 21, there was a complete reversal. The *Philly Voice* article goes on to describe what happened:

After more than a year of stonewalling investigators, Volkswagen stunned two senior officials with the U.S. Environmental Protective Agency and California's environmental watchdog by admitting the automaker hacked its own cars to deceive U.S.

⁷⁹ <http://www.cnbc.com/2015/09/24/>.

⁸⁰ <http://www.phillyvoice.com/year-stonewalling-volkswagen-stunned-regulators/>.

regulators about how much their diesel engines pollute.

That disclosure on Aug. 21, confirmed by two people with knowledge of the exchange, shows Volkswagen buckled to pressure from environmental regulators almost a month earlier than the scandal was made public. The admission to regulators came after a year during which VW officials insisted to regulators that tests on its diesel cars showing a spike in pollution levels on the road were in error.

At first, regulators were surprised that Volkswagen would make its confession at the conference, held in Pacific Grove, California. Minutes before Christopher Grundler, director of the EPA's transportation and air quality office, was to deliver a 9 a.m. speech to the conference, a Volkswagen representative told him about the deception. At the same meeting, representatives of the California Air Resources Board, a state agency that had been pushing VW hard, were also given a verbal notice of the deception, people with knowledge of the events said.

Volkswagen declined to comment on the sequence of events described to Reuters. It isn't clear which VW representative delivered the news of the deception to Grundler and the CARB. Stuart Johnson, head of VW's engineering and environmental office in the United States, was registered to attend the Aug. 21 conference, which was organized by the University of California, Davis. Johnson, who still works for VW in Auburn Hills, Michigan, did not respond immediately to a request for comment.

78. Volkswagen was faced with the threat that the EPA it would not certify any of its 2016 models for sale in the United States until the questions surrounding the emissions discrepancies were answered. Volkswagen admitted that it relied upon a "second calibration" in the vehicles that was intended to run only during certification testing. This second calibration was triggered when a highly sophisticated software algorithm determined – after measuring factors like the position of the steering wheel, the vehicle's speed, pedal movement, and even barometric pressure – that the car was being tested. Then it would configure the engine to reduce emissions of NOx. As David Clegern of CARB explained, "[w]e met with VW on several occasions and they continued to dispute our data, so we'd return to the lab. Over time, VW had no other explanations left, and it was our lab staff who actually got VW to admit that there was, in fact, a defeat device."⁸¹

⁸¹ <http://www.foxnews.com/leisure/2015/09/22/for-7-years-vw-software-thwarted-pollution-regulations/>.

As another CARB spokesperson told the *Washington Post*, “[t]hey basically ran out of excuses.”⁸²

79. The scandal surfaced on September 18, 2015, when CARB and the EPA announced that VWAG, Audi and VWoA had illegally installed emissions testing “defeat devices” in the aforementioned vehicles. *See* Appendices 1 and 2. The EPA found violations of 42 U.S.C. §§7522(a), 7522(a)(1) and 7522(a)(3)(B), as well as 40 C.F.R. §§86.1854-12(a)(3)(ii) and 86.1854-12(a). The EPA identified the following affected vehicles:

| Model Year | EPA Test Group | Make and Model(s) |
|-------------------|-----------------------|---|
| 2009 | 9VWXV02.035N | VW Jetta, VW Jetta Sportwagen |
| 2009 | 9VWXV02.0U5N | VW Jetta, VW Jetta Sportwagen |
| 2010 | AVWXV02.0U5N | VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2011 | BVWXV02.0U5N | VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2012 | CVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2012 | CVWXV02.0U4S | VW Passat |
| 2013 | DVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2013 | DVWXV02.0U4S | VW Passat |
| 2014 | EVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2014 | EVWXV02.0U4S | VW Passat |
| 2015 | FVGAV02.0VAL | VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3 |

80. As noted above, Horn of VWoA admitted that Volkswagen was dishonest with both customers and regulators and Huber of VWAG called the matter a “moral and political disaster.”

⁸² <http://www.washingtonpost.com/news/wonkblog/wp/2015/09/22/anatomy-of-volkswagonsdeception-the-recall-that-never-fixed-any-cars/>.

81. Volkswagen has ordered its dealers to cease selling the Class Vehicles⁸³ and has set aside a minimum of 6.5 billion Euros (\$7.2 billion) to deal with the fallout from this catastrophe, which it now concedes involved 11 million vehicles worldwide. An internal memorandum issued on September 22 details this:

Wolfsburg, 22 September 2015

Volkswagen AG has issued the following information:

Volkswagen is working at full speed to clarify irregularities concerning a particular software used in diesel engines. New vehicles from the Volkswagen Group with EU 6 diesel engines currently available in the European Union comply with legal requirements and environmental standards. The software in question does not affect handling, consumption or emissions. This gives clarity to customers and dealers.

Further internal investigations conducted to date have established that the relevant engine management software is also installed in other Volkswagen Group vehicles with diesel engines. For the majority of these engines the software does not have any effect.

Discrepancies relate to vehicles with Type EA 189 engines, involving some eleven million vehicles worldwide. A noticeable deviation between bench test results and actual road use was established solely for this type of engine. Volkswagen is working intensely to eliminate these deviations through technical measures. The company is therefore in contact with the relevant authorities and the German Federal Motor Transport Authority (KBA – Kraftfahrtbundesamt).

To cover the necessary service measures and other efforts to win back the trust of our customers, Volkswagen plans to set aside a provision of some 6.5 billion EUR recognized in the profit and loss statement in the third quarter of the current fiscal year. Due to the ongoing investigations the amounts estimated may be subject to revaluation.

Earnings targets for the Group for 2015 will be adjusted accordingly.

Volkswagen does not tolerate any kind of violation of laws whatsoever. It is and remains the top priority of the Board of Management to win back lost trust and to avert damage to our customers. The Group will inform the public on the further progress of the investigations constantly and transparently.

82. Volkswagen has indicated it will initiate a recall and remediation of the Class Vehicles, but there is no “fix” that can be achieved that would not result in lesser mileage per gallon or degraded performance, two of the key attributes on which TDI Clean Diesel cars were sold.

⁸³ See <http://pics3.tdiclub.com/data/3209/stop-sale-note3.pdf>.

Experts Reuters spoke to indicate that two potential fixes could be needed for the two types of emissions control systems featured on 482,000 cars in the U.S., complicating the recall and refit process. Some experts opined that just a software solution could make the affected vehicles compliant with EPA regulations, reducing the performance characteristics of the engines in the process, while others suspect that a hardware solution may be needed for older vehicles without the urea injection system.

A couple of experts warned that the potential solution could involve significantly increased consumption of urea, necessitating fill-ups at more frequent intervals such as every 5,000 miles, in addition to reducing the performance of the engines.⁸⁴

The same point was made by the West Virginia AG in a complaint filed on October 2 against Volkswagen for civil penalties. It is attached as Exhibit 8. In that complaint, the West Virginia AG notes that “Volkswagen will not be able to comply with the EPA [recall] order to make the Affected Vehicles comply with emissions standards without substantially degrading their performance and fuel efficiency to a level below that advertised by Volkswagen, and below that experienced by consumers prior to, or when they purchased their vehicles.” Thus, there is no valid “cure” for Volkswagen’s conduct.

83. Nor can any recall cure the tarnished reputation of Volkswagen’s TDI Clean Diesel vehicles and the substantial diminution of their resale value. The Kelley Bluebook has reported that prices for used Volkswagen diesel cars have declined by 21% in the last few weeks, reflecting the aftermath of Dieselgate.⁸⁵ Thus, customers not only overpaid when they bought the Class Vehicles, but have suffered a significant diminution of the resale value of their vehicles. Indeed, a survey of 460 fleet buyers in the United Kingdom revealed that 49% of them were reconsidering their contracts with Volkswagen in the aftermath of the Dieselgate revelations.⁸⁶

84. As noted above, the Executive Committee of the Board that accepted his retirement

⁸⁴ <http://autoweek.com/article/car-news/vw-diesel-emissions-fix-may-require-2-solutions>.

⁸⁵ <http://www.latimes.com/business/autos/la-fi-hy-auto-sales-20151001-story.html>.

⁸⁶ <http://www.dailymail.co.uk/money/news/article-3258793/VW-scandal-deepens-revealed-half-company-car-buyers-ditch-embattled-firm.html>.

said that it “recognizes the economic damage caused” as well as the “loss of trust” among customers. No recall and supposed remediation can correct that.

85. A survey of vehicle owners conducted by AutoPacific⁸⁷ further reveals consumer disgust with Volkswagen. Only one in four have a positive opinion of Volkswagen, compared to three in four before the scandal. The corresponding figures for Audi were 29%, as opposed to 69%. Sixty-four percent of the survey respondents say they do not trust Volkswagen.

86. But the illegal conduct by Volkswagen has not just resulted in economic damage and loss of consumer trust. It has caused **the death of dozens of people in the United States over the last seven years and degraded the health of many more.** On October 3, Associated Press (“AP”) laid out the facts.⁸⁸ AP calculated exhaust pollution year by year, starting with the ten to 40 times emissions level estimate by the EPA and then factored in mileage and car number totals from the Kelley Blue Book. It came up with a range of NOx pollution caused by the Class Vehicles and then took it to scientists who modeled mortality rates, which were confirmed by a dozen experts in emissions, risk and public health, none of whom were environmental advocates or representatives of automobile manufacturers. The results are depicted in the chart that follows.

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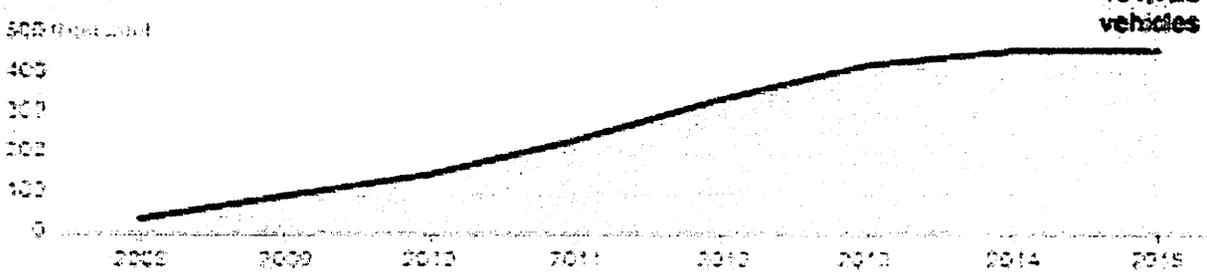
⁸⁷ <http://www.autopacific.com/news-app/story.248/title.volkswagen-s-reputation-takes-big-hit-with-vehicle-owners-autopacific-predicts-tough-road-ahead>.

⁸⁸ <http://bigstory.ap.org/article/a6925f0af82e44aaa1a1ed4b55d030f6/ap-analysis-dozens-deaths-likely-vw-pollution-dodge>.

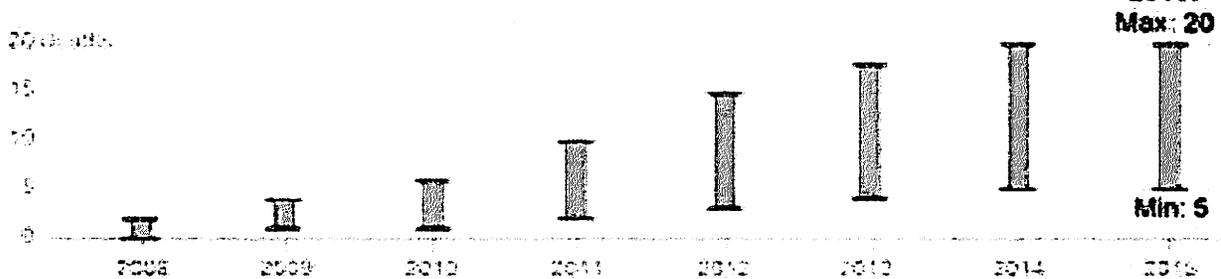
Calculating human toll of VW emissions problems

U.S. pollution resulting from Volkswagen's dodging of emissions tests is enough to have caused dozens of deaths since 2008. An AP analysis calculated upper and lower limits of pollution using the number of affected vehicles each year and average mileage. Scientists used that data in epidemiological computer models to estimate a range of deaths.

CUMULATIVE NUMBER OF AFFECTED VEHICLES IN THE U.S.

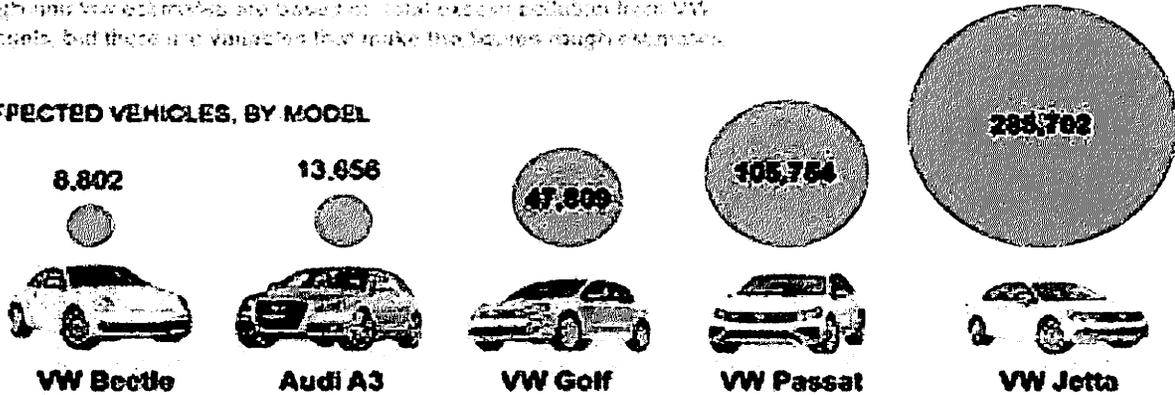


YEARLY ESTIMATED RANGE OF U.S. DEATHS FROM VW EMISSIONS VIOLATIONS



High and low estimates are based on total expected pollution from VW fleets, but there are variables that make the figures rough estimates.

AFFECTED VEHICLES, BY MODEL



NOTE: The total of 47,809 VW Golfs included 3,539 VW Golf Sportsvan models. The total amount of 461,723 is derived from Kelley Blue Book vehicle registration data. The Environmental Protection Agency estimates the total number of affected vehicles in the U.S. to be about 482,000.

SOURCES: AP analysis of data from the U.S. Environmental Protection Agency and Kelley Blue Book; AP Professor Peter Adams, Carnegie Mellon; Volkswagen USA.

87. As the AP article notes, the Class Vehicles spewed enough NOx over the course of seven years to significantly degrade the environment in urban areas. Eric Schneiderman, the New York AG has said that “[t]he stakes could not be higher for the health and safety of our communities who, if Volkswagen’s own admissions are true, have for years been breathing air containing excess pollution from their vehicles.”⁸⁹ Harris County Texas (where the City of Houston is located) has already sued Volkswagen for \$100 million in harm to air quality.⁹⁰

88. As noted in the *Minneapolis Star-Tribune* in a follow-up piece on the AP story:

Computer software allowed VW diesel cars to spew between 10 to 40 times more nitrogen oxides (NOx) than allowed by regulation, making this "clearly a concern for air quality and public health," said Janet McCabe, acting air quality chief for the U.S. Environmental Protection Agency.

Nitrogen oxides mostly form smog — that murky, dirty air that makes it hard to see and for some people to breathe — but also amplify a deadlier, larger problem: tiny particles of soot. Numerous medical studies show those tiny particles cause about 50,000 deaths a year in the United States, mostly from heart problems.

Nitrogen oxides can travel hundreds of miles, so pollution spewed in Pittsburgh can be felt on the East Coast, [Carnegie Mellon environmental engineer Professor Peter] Adams said.

Experts calculate how much pollution costs society by looking at the value of lost lives. In this case, Adams and other said the lost lives — valued at \$8.6 million apiece — overwhelm other costs such as lost work days or hospital costs. The overall annual cost of the extra pollutants from the VW diesels ranged from \$40 million to \$170 million, environmental engineering professors calculated. "Even the small increase in NOx from VW diesel emissions is likely to have worsened pollution along the roadways where they have traveled, and affected the lives of hundreds of thousands of people," said Dan Greenbaum, president of the Health Effects Institute in Boston.

⁸⁹ http://mobile.nytimes.com/2015/10/03/business/us-states-jumping-into-investigation-of-vw-emissions-deception.html?_r=0&referrer=https://www.google.com/.

⁹⁰ <http://www.wsj.com/articles/u-s-justice-department-conducts-criminal-probe-of-volkswagen-sources-say-1442869059>.

"To say millions of people of people are breathing poor air as the result of that is not off the mark," said Greenbaum, who runs the institute that is funded by both the EPA and the auto industry to serve as an independent arbiter of the science.⁹¹

89. The revelation of the scandal has led to numerous consequences in the United States. The DOJ is conducting a criminal probe of Volkswagen.⁹² AGs in 30 states have initiated their own investigation.⁹³ A Texas judge has issued a temporary restraining order preventing the Class Vehicles from being sold within the state. *See* Exhibit 9 to the Complaint. The Subcommittee of Oversight & Investigations of the Energy & Commerce Committee of the United States House of Representatives has initiated an investigation and sent letters to Volkswagen and the EPA.⁹⁴ Horn has said he will testify before the committee on October 8.⁹⁵ Fred Upton, the chairman of the full committee, has stated that "[t]he very notion of a carmaker intentionally violating our environmental laws is beyond belief....[R]eports of Volkswagen selling cars with devices aimed at skirting the law cannot, and will not be tolerated. Attempting to deceive regulators and customers is a double whammy of betrayal."⁹⁶ Nearly 200 private lawsuits have been filed, many of them class actions. Among those class actions, most involve class claims for individual statewide classes, as opposed to federal claims for nationwide classes.

90. Outside the United States, several countries are investigating Volkswagen's

⁹¹ <http://www.startribune.com/ap-analysis-dozens-of-deaths-likely-from-vw-pollution-dodge/330512421/>.

⁹² <http://www.wsj.com/articles/u-s-justice-department-conducts-criminal-probe-of-volkswagen-sources-say-1442869059>.

⁹³ <http://www.law360.com/articles/707229/volkswagen-faces-multistate-probe-over-emissions-fraud>.

⁹⁴ <http://energycommerce.house.gov/press-release/committee-leaders-request-documents-volkswagen-investigation-continues>.

⁹⁵ <http://www.detroitnews.com/story/business/autos/foreign/2015/10/01/vw-congress/73159518/>.

⁹⁶ <http://energycommerce.house.gov/press-release/suboversight-schedules-volkswagen-hearing-october-8>.

conduct.⁹⁷ Switzerland has banned the sale within its borders of certain Volkswagen TDI Diesel cars sold in Europe.⁹⁸ Prosecutors in Paris have launched an investigation for suspected “aggravated” deception of affected vehicles sold in France; French Environment Minister Segolene Royal called Volkswagen’s conduct “a form of theft from the taxpayer and the state.”⁹⁹ The Italian antitrust authority has also commenced an investigation, saying “Volkswagen’s claims about emissions and certifications in advertising campaigns and information brochures distributed by dealers might have induced consumers to make an error in their choice.”¹⁰⁰

91. As noted above, Volkswagen has set aside \$7.2 billion to deal with the costs of the scandal. That will not be nearly enough. James E. Tierney, a former AG in Maine, has been quoted as saying that the costs to Volkswagen might be “‘incalculable,’ with each false advertisement to consumers, for example, carrying a potential penalty. ‘This product was designed to operate illegally, and that is very serious.’”¹⁰¹

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⁹⁷ https://en.m.wikipedia.org/wiki/Volkswagen_emissions_violations.

⁹⁸ <http://www.theguardian.com/business/2015/sep/26/volkswagen-emissions-scandal-switzerland-bans-sale-of-some-models>.

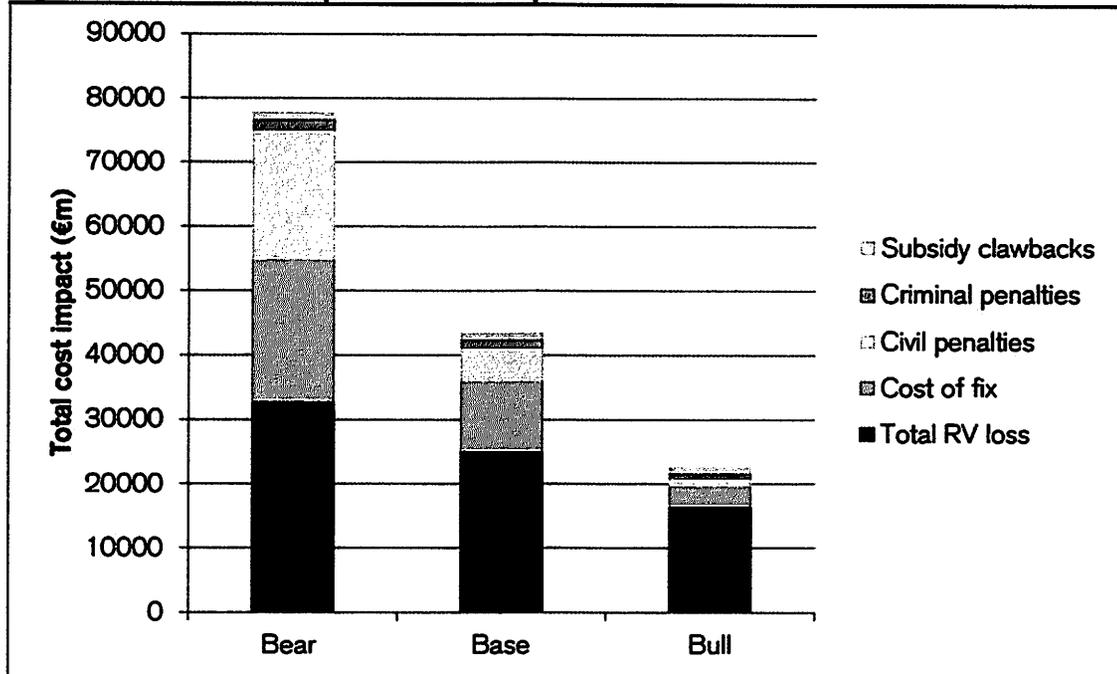
⁹⁹ <http://www.dailymail.co.uk/news/article-3257720/Paris-prosecutors-latest-launch-investigation-potential-fraud-Volkswagen-emissions-cheating-scam.html>.

¹⁰⁰ http://www.morningstar.com/news/dow-jones/TDJNDN_201510023140/italy-antitrust-body-opens-case-against-volkswagen-over-emissions.html.

¹⁰¹ http://mobile.nytimes.com/2015/10/03/business/us-states-jumping-into-investigation-of-vw-emissions-deception.html?_r=0&referrer=https://www.google.com/.

92. Nonetheless, some attempts at calculation have been made. On October 2, Credit Suisse disseminated an analysis showing Volkswagen's anticipated costs in a "bull" scenario (where events turned out favorably to it), a "base" scenario, and a "bear" scenario (where events turned out unfavorably).¹⁰² The "bull" scenario was \$25.6 billion in costs, while the "bear" scenario was \$87.1 billion. The analysis is summarized in the following chart:

Figure 17: **Breakdown of potential cost impact for VW**



Source: *Credit Suisse estimates*

As can be seen, costs associated with criminal and civil penalties make up a significant portion of the differing amounts. Credit Suisse also predicts that Volkswagen's stock may decline another 20%.

VI. CLASS ACTION ALLEGATIONS.

93. Plaintiffs bring this action both on behalf of themselves, and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), on behalf of the following class (the

¹⁰² <http://www.businessinsider.com/credit-suisse-volkswagen-shares-could-fall-another-20-2015-10?r=UK&IR=T>.

“Class”).

All persons and entities who purchased or leased a Class Vehicle from a Volkswagen Authorized Dealer in the United States. Excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

The Class includes subclasses of persons located in California and Virginia. These will be referred to herein as the “California Subclass” and the “Virginia Subclass.”

94. Plaintiffs do not know the exact number of Class and Subclass members but believe based on published reports that there are more than 482,000 Class members, geographically dispersed throughout the United States such that joinder of all class members is impracticable. The identity of Class members can be determined from the internal records of Volkswagen.

95. Plaintiffs’ claims are typical of the claims of the Class and Subclasses in that Plaintiffs purchased or leased a Class Vehicle from a Volkswagen Authorized Dealer in the United States. All Class and Subclass members were damaged by the same wrongful conduct of Defendants and their co-conspirators as alleged herein, and the relief sought is common to the class.

96. Common questions of law and fact predominate over any individual questions. These questions include, but are not limited to:

- Whether Volkswagen unlawfully acquired a monopoly in the Clean Diesel Car Market;
- Whether the Clean Diesel Car Market is a properly defined product market for purposes of Section 2 of the Sherman Act;
- Whether Volkswagen’s acquisition and/or maintenance of a monopoly in the Clean Diesel Car Market had the effect of increasing to supracompetitive levels the retail prices of Class Vehicles;
- Whether Volkswagen violated the CAA and applicable regulations;
- Whether Volkswagen violated California Pollution Control laws and applicable

regulations;

- Whether Volkswagen's conduct violated RICO;
- Whether the Volkswagen RICO Enterprise as defined herein is a cognizable RICO enterprise;
- Whether Volkswagen committed federal mail and wire fraud, thus establishing predicate acts under RICO:
- Whether Volkswagen engaged in a pattern of racketeering activity;
- Whether Plaintiffs and Class members were injured in their business or property, and, if so, what is the appropriate measure of their damages;
- Whether Volkswagen misrepresented the environmental impact of its Class Vehicles;
- Whether Volkswagen misrepresented the Class Vehicles' emission standards compliance, fuel efficiency or performance;
- Whether Volkswagen violated the Magnuson-Moss Warranty Act;
- Whether Volkswagen violated California's Consumer Legal Remedies Act;
- Whether Volkswagen violated California's Unfair Competition Law;
- Whether Volkswagen violated California's False Advertising Law;
- Whether Volkswagen violated Virginia's Consumer Protection Law;
- Whether Volkswagen committed fraudulent concealment;
- Whether Volkswagen was unjustly enriched;
- Whether Plaintiffs and the other members of the Class and Subclasses were injured by Defendants' conduct, and, if so, the appropriate classwide measure of damages for Class members; and
- The scope of any injunctive and other equitable relief to which Plaintiffs and the other members of the Class and Subclasses are entitled.

97. These and other questions of law and fact are common to the Class and Subclasses

predominate over any questions affecting only individual Class members.

98. Plaintiffs' claims are typical of the claims of the Class and Subclasses because Plaintiffs purchased a Class Vehicle from a Volkswagen Authorized Dealer in the United States.

99. Plaintiffs will fairly and adequately represent the interests of the Class and Subclasses in that they have no conflict with any other members of the Class and Subclasses. Furthermore, Plaintiffs have retained competent counsel experienced in antitrust, class action, and other complex litigation.

100. Defendants have acted on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class and Subclasses as a whole.

101. This class action is superior to the alternatives, if any, for the fair and efficient adjudication of this controversy. Prosecution as a class action will eliminate the possibility of repetitive litigation. There will be no material difficulty in the management of this action as a class action. The prosecution of separate actions by individual Class and Subclass members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

CAUSES OF ACTION

FIRST CLAIM

Violation of the Section 2 of the Sherman Antitrust Act (Monopolization) (15 U.S.C. § 2).

102. Plaintiffs incorporate by reference each preceding and succeeding paragraph.

103. The relevant product market for purposes of Plaintiffs' claims under Section 2 of the Sherman Act is the Clean Diesel Car Market, which, as noted above, consists of: (a) the product market of Clean Diesel passenger cars and (b) a geographic market consisting of the United States. All diesel fuel sold in the United States during the relevant period is "clean diesel fuel", with 97% less sulfur than the diesel sold in the 1970s. Similarly, all diesel cars sold in the United States since 2007 (which have had to meet the same emission standards as gasoline engines) have advanced engines and emissions control technology that make the diesel engines cleaner than in

the past, are able to take advantage of the clean diesel fuel, and use exhaust systems that further reduce diesel engine emissions.

104. As Volkswagen's own market research and market research by others described above have demonstrated, clean diesel cars are not in the same relevant market as gasoline or even hybrid cars of similar size and class. Diesel engines require the use of a different and more expensive fuel than gasoline-powered engines, can travel much greater distances on a single tank of fuel, and are more expensive. Unlike hybrid or electric vehicles, diesel-powered vehicles do not have to be plugged in, can travel greater distances without refueling or plugging in, and -- particularly with more recent compression technology like the Volkswagen's TDI engines -- have greater torque, acceleration, and towing power. In addition, the demographics of the clean diesel buyers are distinct from those of hybrid buyers; they are more likely to be male, younger, and less likely to have children.

105. At all relevant times, Volkswagen has been a competitor in the Clean Diesel Car Market, and has maintained significant market share. As the chart presented by Skorupski of VWoA depicted above demonstrates, Volkswagen's share of the Clean Diesel Car Market has been 70% or more during the entire relevant period.

106. Barriers to entry in the Clean Diesel Car Market are high. In addition to the barriers to entry and expansion posed by Volkswagen's anticompetitive conduct, as described in this Complaint, other barriers to entry include: high research and development costs, high costs of making diesel engines that are EPA- and CARB-compliant, and high capital costs.

107. Consumers, experts and commentators in the automotive industry, and the automobile manufacturers themselves, including Volkswagen, all recognize the Clean Diesel Car market as distinct from markets including gasoline, hybrid, or electric cars.

108. Volkswagen has monopoly power in the Clean Diesel Car Market.

109. Through the anticompetitive use of the defeat device and its deception of the EPA, CARB, Plaintiffs, and the Class, Volkswagen has willfully acquired and/or maintained its

monopoly of the Clean Diesel Car Market. This conduct has harmed competition in that market, and has caused injury to every person that purchased or leased a Class Vehicle. The purchase or lease price was higher than it would have been in a competitive market; the supply and selection of products was lower than it would have been in a competitive market; innovation has been stifled; and the number and effectiveness of competitors in that Market has been diminished by unlawful means.

110. As a result of this violation of law, the price of Class Vehicles was higher than it otherwise would have been.

111. There is no legitimate business justification for the conduct described in this Complaint which has facilitated Volkswagen's monopolization of the Clean Diesel Car Market.

112. The anticompetitive conduct described in this Complaint has caused injury to the business or property of Plaintiffs and members of the Class and is in violation of section two the Sherman Act (15 U.S.C. § 2).

113. Plaintiffs are buyers of Class Vehicles in the Clean Diesel Car Market; they are thus direct participants in the monopolized market. Volkswagen issues warranties directly to Class Vehicle buyers. The Volkswagen Authorized Dealers¹⁰³ obtain Class Vehicles from Volkswagen (through its American subsidiaries) that are certified to be EPA- and/or CARB-compliant and, as noted above, have visible stickers to that effect. The emissions testing that is used to justify those certifications is undertaken by VWoA in the United States.¹⁰⁴ Class Vehicles so labeled are

¹⁰³ In a recent recall notice unrelated to Dieselgate, Volkswagen has indicated that it has 652 authorized dealers in the United States. https://media.vw.com/doc/1456/volkswagen_issues_voluntary_recall-tiguan_label_recall_release-17883691505565f01ccc4bb.pdf. Their names and addresses can be identified through Volkswagen's records. The Volkswagen Authorized Dealers have a 12-person National Dealer Advisory Council that interacts closely with VWoA on such issues as company management.

¹⁰⁴ <http://www.manufacturing.net/news/2015/10/vw-pollution-test-site-under-scrutiny-amid-emissions-cheating-scandal>.

displayed on the showroom floors of Volkswagen Authorized Dealers. The false certifications by Volkswagen were one of the critical elements of its unlawful scheme of monopolization. The Volkswagen Authorized Dealers were agents of Volkswagen for the purpose of disseminating these false certifications and representations by Volkswagen to customers in order to induce them to purchase TDI Clean Diesel vehicles. In addition, Volkswagen (through its American subsidiaries) sets the Manufacturer's Suggested Retail Price ("MSRP") for Class Vehicles, which includes the premium for the TDI Clean Diesel technology described herein. While Volkswagen Authorized Dealers could charge customers a price less than the MSRP (such as when Volkswagen provides rebates or short-term retail promotions), that lesser price is nonetheless keyed off the MSRP and still contains a portion of the premium for the sham TDI Clean Diesel technology. This case involves retail prices for Class Vehicles paid by consumers like plaintiffs, who are participants in the relevant market and who pay more for those vehicles because of Volkswagen's illegal monopolistic practices.

SECOND CLAIM

**Violation of Section 2 of the Sherman Antitrust Act (Attempted Monopolization)
(15 U.S.C. § 2).**

114. Plaintiffs incorporate by reference each preceding and succeeding paragraph.

115. Volkswagen has acted with specific intent to monopolize the Clean Diesel Car Market as described above through the anticompetitive use of the defeat device and its deception of the EPA, CARB, Plaintiffs, and the Class.

116. There was and is a dangerous probability that Volkswagen will succeed in its attempt to monopolize the Clean Diesel Car Market because Volkswagen controls a large percentage of that market and has the ability to and actually did exclude competitors through the anticompetitive conduct described in this Complaint.

117. Volkswagen's conduct has harmed competition in the Clean Diesel Car Market, making the supply and selection of available Clean Diesel Cars lower than it would be in a competitive market.

118. There is no legitimate business justification for the conduct described in this Complaint which has facilitated Volkswagen's monopolization of the Clean Diesel Car Market.

119. The anticompetitive conduct described in this Complaint has caused injury to the business or property of Plaintiffs and members of the Class and is in violation of the Sherman Act (15 U.S.C. § 2).

THIRD CLAIM

Violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO") (18 U.S.C. §§ 1962(c), 1964).

120. Plaintiffs incorporate by reference each preceding and succeeding paragraph.

121. Each Plaintiff is a "person" within the meaning of 18 U.S.C. § 1964(c), and each has sustained injury to his or her business or property as a result of Volkswagen's conduct described in this Complaint.

122. Each Defendant is a "person" within the meaning of 18 U.S.C. § 1961(3).

123. Defendants violated 18 U.S.C. §1962(c) by participating in or conducting the affairs of the Volkswagen RICO Enterprise through a pattern of racketeering activity.

124. For the past seven years, Volkswagen has engaged in a deliberate, pre-meditated and continuous effort to deceive Plaintiffs, members of the Class, and federal and state regulators into believing that the Class Vehicles are environmentally-friendly, fuel-efficient, and EPA- and CARB-compliant. Unknown to Plaintiffs, Class members and federal and state regulators, Volkswagen installed pollution control defeat devices into the Class vehicles that turned off the pollution controls when the cars were in normal operating mode.

125. Plaintiffs and Class members had no way of knowing that these systems were disabled by Volkswagen. Pursuant to the CAA, Volkswagen was required to equip its cars with on-board diagnostic systems that trigger a dashboard "check engine" light that alerts the driver of a possible pollution control device malfunction. The Class Vehicles' diagnostic systems did not trigger this "check engine light," because the defeat device was designed to evade EPA and CARB pollution controls.

126. In dozens of advertising campaigns and statements and in certifications of EPA and CARB compliance Volkswagen has falsely represented the Class Vehicles' "green credentials" and performance.

127. Volkswagen engaged in a common course of conduct and conspiracy with the common purpose of defrauding Plaintiffs and members of the Class into purchasing Class Vehicles at artificially inflated prices.

The Volkswagen RICO Enterprise.

128. Volkswagen conducted the affairs of an association-in-fact enterprise (the "Volkswagen RICO Enterprise") through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c).

129. The enterprise engaged in and continues to engage in interstate commerce, and its activities affect interstate commerce.

130. The Volkswagen RICO Enterprise is an association-in-fact enterprise comprised of the Defendants and Volkswagen Authorized Dealers in the United States. Each participant in the Enterprise played a designated, well-defined role in the affairs of the Volkswagen RICO Enterprise.

131. Volkswagen designed, manufactured, and sold to Volkswagen Authorized Dealers the Class Vehicles containing the defeat devices that are the subject of this Complaint. Volkswagen developed the advertising campaigns that misrepresented to Plaintiffs and Class members the true nature of the Class Vehicles, which were not, contrary to Defendants' misrepresentations, environmentally-friendly, fuel-efficient, or EPA- or CARB-compliant. Volkswagen deceptively certified the Class Vehicles as EPA- and CARB-compliant. And Volkswagen lied to CARB and EPA officials about the full nature and extent of the problem.

132. The Volkswagen Authorized Dealers that sold and leased the Class Vehicles to Plaintiffs and members of the Class were a critical element of the Volkswagen RICO Enterprise. Volkswagen sold the Class Vehicles to Volkswagen Authorized Dealers, who then sold or leased

them to Plaintiffs and members of the Class. Whether or not the Volkswagen Authorized Dealers knew that the Class Vehicles contained defeat devices that made Volkswagen's advertisements and representations false, the Volkswagen Authorized Dealers displayed those advertisements and repeated those misrepresentations. Indeed, Volkswagen required Volkswagen Authorized Dealers to display and repeat those misrepresentations in the Volkswagen and Audi Standard Dealer Agreements.

133. The Volkswagen RICO Enterprise has an ascertainable structure and purpose beyond the scope and commission of Volkswagens' predicate acts and conspiracy to commit such acts. The Enterprise is separate and distinct from Defendants, and functions as a continuing unit. The members of the Enterprise have distinct and separate roles and responsibilities.

134. At all relevant times, Volkswagen operated, controlled or managed the Volkswagen RICO Enterprise. Volkswagen's participation was critical for the success of the scheme to defraud because Volkswagen manufactured the Class Vehicles, designed and installed the defeat devices, and concealed those devices from Plaintiffs, Class members and regulatory authorities.

135. Section 1961(1)(B) of RICO defines "racketeering activity" as any act indictable under 18 U.S.C. §§1341 (mail fraud) and 1343 (wire fraud), among other statutes. As described in this Complaint, Volkswagen's conduct violated both of these laws.

136. Volkswagen conducted the affairs of the Volkswagen RICO Enterprise through a "pattern of racketeering activity," as defined by 18 U.S.C. §1961(5) by committing at least two acts of racketeering activity, *i.e.*, indictable violations of 18 U.S.C. §§1341 and 1343, within the past ten years. In fact, Volkswagen has committed dozens of acts of racketeering activity. Each racketeering act was related, had a similar purpose, involved the same or similar participants and method of commission, had similar results and impacted similar victims, including the Plaintiffs and members of the Class.

137. Defendants' multiple acts of racketeering activity were related to each other and amount to continued racketeering activity, and therefore constitute a "pattern of racketeering

activity” as defined in 18 U.S.C. §1961(5).

Predicate Act Violations of 18 U.S.C. §§1341 and 1343.

138. For the purpose of executing the fraudulent scheme described in this Complaint, Volkswagen, in violation of 18 U.S.C. §1341 (mail fraud), placed in post offices and/or in authorized repositories, matter and things to be sent or delivered by the U.S. Postal Service, caused matter and things to be delivered by commercial interstate carriers, and received matter and things from the U.S. Postal Service and/or commercial interstate carriers, including, but not limited to, advertising materials, marketing and sales materials, correspondence, contracts, sales and leasing documents, Certificates of Compliance, communications with the EPA, CARB and other regulatory officials, and other materials relating to the Class Vehicles sold and leased to Plaintiffs and Class members.

139. For the purpose of executing the fraudulent scheme described in this Complaint, Volkswagen, in violation of 18 U.S.C. §1343 (wire fraud), transmitted and received by wire, matter and things, which include, but are not limited to, advertising materials, marketing and sales materials, correspondence, contracts, sales and leasing documents, Certificates of Compliance, communications with the EPA, CARB, and other regulatory officials, and other materials relating to the Class Vehicles sold and leased to Plaintiffs and Class members.

140. For the purpose of executing the fraudulent scheme described in this Complaint, Volkswagen, in violation of 18 U.S.C. §§1341 and 1343, made numerous material misrepresentations about the Class Vehicles’ environmental impact, fuel efficiency, and EPA- and CARB-compliance, and made many material omissions of fact, including concealing that the cars contained defeat devices that rendered them non-compliant with applicable emissions standards. Volkswagen made these misrepresentations and omissions with the intent and effect of inducing Plaintiffs to rely on such misrepresentations and omissions.

141. Defendants’ misrepresentations, omissions of material facts, acts of concealment, and failures to disclose, were knowing and intentional, and made for the purpose of deceiving

Plaintiffs and Members of the Class into purchasing and leasing Class Vehicles.

142. Defendants either knew or recklessly disregarded the fact that the misrepresentations and omissions described above and incorporated herein were material, and Plaintiffs and Class members relied on the misrepresentations and omissions as set forth above.

143. Volkswagen's affirmative and deliberate misrepresentations regarding the Class Vehicles' environmental friendliness, fuel efficiency and performance, and omission of the true facts, were material factors in inducing Plaintiffs and Class members to purchase and lease the Class Vehicles. Plaintiffs and Class members relied on those misrepresentations and omissions and would have not purchased or leased the vehicles in their absence, or, at a minimum, would have paid significantly less than they did.

144. Each act of deception, as described in this Complaint, constitutes a violation of 18 U.S.C. §§1341 (mail fraud) or 1343 (wire fraud), and constitutes an act of "racketeering activity" as defined in 18 U.S.C. §1961(5).

145. As a result, Plaintiffs and Class members have been injured in their business and property within the meaning of 18 U.S.C. §1964(c). Plaintiffs' and Class members' damages include, but are not limited to: purchasing or leasing Class Vehicles that they would not otherwise have purchased or leased; paying more for Class Vehicles than they would have otherwise paid if they had known the true facts concerning the defeat devices; and purchasing Class Vehicles, the value of which has been severely diminished, thus reducing their residual and/or resale value.

146. Volkswagen's RICO violations directly and proximately caused injury to the business and property of Plaintiffs and Class members, and Plaintiffs and Class members are entitled to three times their actual damages, as well as injunctive and other equitable relief, plus their costs and reasonable attorneys' fees.

FOURTH CLAIM

Violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et seq.*)

147. Plaintiffs incorporate by reference each preceding and succeeding paragraph.

148. Plaintiffs and the Class bring this claim under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*

149. The Class Vehicles are consumer products as defined in 15 U.S.C. §2301(1).

150. Volkswagen is a supplier and warrantor as defined in 15 U.S.C. §2301(4), (5).

151. Plaintiffs and the Class received written warranties as defined in 15 U.S.C. §2301(6)(A) and/or (B), which Volkswagen has breached.

152. Plaintiffs and the Class are "consumers" as defined in 15 U.S.C. §2301(3). They are consumers because they bought a Class Vehicle and are entitled to enforce both written and implied warranties.

153. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs and the Class are not required to provide Defendants notice of this class action and an opportunity to cure until the time the Court determines the representative capacity of Plaintiffs pursuant to Fed.R.Civ.P. 23.

154. Volkswagen is liable to Plaintiffs and the Class pursuant to 15 U.S.C. § 2310(d)(l) because it breached its written warranties.

155. Further, in connection with the sale of the Class Vehicles, Volkswagen gave an implied warranty under the Act. As part of that implied warranty, Volkswagen warranted that the Class Vehicle complied with all applicable federal and state regulations, including emission regulations. Volkswagen breached the implied warranty of merchantability.

156. Plaintiffs and the Class are entitled to damages caused by Volkswagen's breaches of the warranties, including economic damages based upon either a return of Plaintiffs' and Class Members purchase price; and/or the difference between the price paid for the Class Vehicle as warranted and the actual value of the Class Vehicle as delivered, and consequential damages.

157. In addition, Plaintiffs and the Class are entitled to reasonable attorneys' fees and costs as determined by the Court.

FIFTH CLAIM

**Violations of the Consumers Legal Remedies Act
(California Civil Code § 1750 *et seq.*)**

158. Plaintiffs incorporate by reference each preceding and succeeding paragraph.

159. Plaintiffs Bourn, Watson, and Verner bring this Claim on behalf of the California Subclass.

160. This cause of action is brought pursuant to the California Consumers Legal Remedies Act ("CLRA"), Civil Code §1750, *et seq.* Plaintiffs bring this action on their own behalf and on behalf of the California Subclass, all of whom are similarly situated consumers within the meaning of Civil Code §1781.

161. The acts and practices described in this Complaint were intended to result in the sale of goods, specifically a motor vehicle, in consumer transactions. Volkswagen has violated, and continue to violate California Civil Code § 1770, subdivisions (a)(9), (a)(7), (a)(16), and (a)(5) by:

- Representing to consumers purchasing the Class Vehicles that these vehicles' emissions, fuel efficiency and high performance are as advertised and publicized.
- Representing in their advertising emissions, environmental, fuel efficiency and performance characteristics for the Class Vehicles that are false.

162. Plaintiffs Bourn, Watson, and Verner and the California Subclass members have suffered harm as a result of these violations.

163. Plaintiffs Bourn, Watson, and Verner and California Subclass members have suffered harm as a result of Volkswagen's unlawful conduct because they purchased the Class Vehicles believing, based on Volkswagen's representations, that the Class Vehicles had certain characteristics that made them environmentally friendly, fuel efficient and high performance, when in fact these vehicles cannot have these fuel efficient and performance standards because their emissions do not comply with federal and state laws and regulations. These misrepresentations also resulted in higher purchase prices for the Class Vehicles and the subsequent revelation

concerning the "defeat devices" will result in lower resale value.

164. Volkswagen concealed from Plaintiffs Bourn, Watson, and Verner accurate information concerning the emissions standards, fuel efficiency and performance of the California Subclass Vehicles.

165. Volkswagen's misrepresentations and omissions described in the preceding paragraphs were intentional, or alternatively, made without the use of reasonable procedures adopted to avoid such errors.

166. Volkswagen, directly or indirectly, has engaged in substantially similar conduct with respect to Plaintiffs Bourn, Watson, and Verner and to each member of the California Subclass.

167. Unless Volkswagen is enjoined from engaging in such wrongful actions and conduct in the future, members of the consuming public will be further damaged by Volkswagen's conduct.

168. Plaintiffs Bourn, Watson, and Verner and the Class are entitled to equitable relief on behalf of the members of the California Subclass in the form of an order, pursuant to Civil Code §1780, subdivision (a)(2)-(5), prohibiting Volkswagen from continuing to engage in the above-described violations of the CLRA. Plaintiffs Bourn, Watson, and Verner and the California Subclass further seek reasonable attorneys' fees under Civil Code §1780(e).

SIXTH CLAIM

Violation of California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*)

169. Plaintiffs Bourn, Watson, and Verner incorporate by reference each preceding and succeeding paragraph.

170. Plaintiffs Bourn, Watson, and Verner bring this Claim on behalf of the California Subclass.

171. California Business & Professions Code §17200, *et seq.* prohibits acts of "unfair competition" which is defined by California Business & Professions Code § 17200 as including

any "any unlawful, unfair or fraudulent business act or practice"

172. Volkswagen has violated and continues to violate California Business & Professions Code §17200's prohibition against engaging in "unlawful" business acts or practices, by, inter alia, the following:

- Violating the CAA and applicable regulations;
- Violating California's Air Pollution Control laws and applicable regulations;
- Violating the Sherman Act;
- Violating RICO;
- Violating the Magnuson-Moss Act;
- Violating the CLRA; and
- Violating California's False Advertising Law.

173. Volkswagen also acted fraudulently and unfairly for purposes of section 17200. Volkswagen's misrepresentations and omissions regarding the Class Vehicles' emissions, environmental standards, fuel efficiency, and performance in their advertising, public statements and marketing were a material factor in inducing Plaintiffs Bourn, Watson, and Verner to purchase their Class Vehicle. Plaintiffs Bourn, Watson, and Verner suffered injury in fact and lost money and/or property as a result of Volkswagen's unlawful business acts and practices and California Subclass members have suffered harm when each was required to pay a purchase price for their Class Vehicles which they never would have purchased if the true facts were known; or paid a price in excess of what a California Subclass member would have paid if Volkswagen had accurately disclosed the Class Vehicles' characteristics and in the form of decreased resale value of the Vehicles.

174. As a result of Volkswagen's violations of the California Business & Professions Code §17200, *et seq.*, Plaintiffs Bourn, Watson, and Verner and California Subclass members are entitled to equitable relief in the form of full restitution for the inflated sale price of the Vehicles.

175. Plaintiffs Bourn, Watson, and Verner and California Subclass members also seek an order enjoining Volkswagen from continuing their unlawful business practices and from such future conduct.

SEVENTH CLAIM

**Violation of the California False Advertising Law
(Cal. Bus. & Prof. Code § 17500, *et seq.*)**

176. Plaintiffs Bourn, Watson, and Verner incorporate by reference each preceding and succeeding paragraph.

177. Plaintiffs Bourn, Watson, and Verner bring this Claim on behalf of the California Subclass.

178. Volkswagen violated California's False Advertising Law, Business & Professions Code §17500, *et seq.* by using false and misleading messages regarding the environmental friendliness, emissions, fuel efficiency and performance of the Class Vehicles in television, print, and Internet advertising.

179. These representations and/or omissions have deceived and are likely to deceive Plaintiffs Bourn, Watson, and Verner, the California Subclass, and consumers across the country in connection with their decision to purchase Class Vehicles. Volkswagen's representations and/or omissions were material and constituted a substantial and material factor in Plaintiffs Bourn and Watson's decision to purchase their Class Vehicle. Had Plaintiffs Bourn, Watson, and Verner known the actual facts, they would not have purchased the Class Vehicles and/or paid more than they would have had Volkswagen accurately disclosed the Class Vehicles' true characteristics.

180. Volkswagen directly and indirectly, has engaged in substantially similar conduct with respect to each Plaintiff and to each member of the California Subclass.

181. Plaintiffs Bourn, Watson, and Verner suffered injury in fact and lost money and/or property as a result of Volkswagen's false and misleading advertising and California Subclass members suffered harm when each was required to pay a purchase price in excess of what a

California Subclass member would have paid if Volkswagen had accurately disclosed the Class Vehicles' characteristics and in the form of decreased resale value of the Class Vehicles.

182. As a result of Volkswagen's violations, Plaintiffs Bourn, Watson, and Verner and California Subclass members are entitled to equitable relief in the form of full restitution of all monies paid for the sales price of the Vehicles, diminished value of the Class Vehicles, and/or disgorgement of the profits derived from Volkswagen's false and misleading advertising.

183. Plaintiffs Bourn, Watson, and Verner also seek an order enjoining Volkswagen from such future conduct.

EIGHTH CLAIM

Violation of the Virginia Consumer Protection Act (Va. Code Ann. §§59.1-196, *et seq.*)

184. Plaintiff Schumacher incorporates by reference each preceding and succeeding paragraph.

185. Plaintiff Schumacher brings this Claim on behalf of the Virginia Subclass, which is cognizable in this Court pursuant to *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010).

186. Defendants are "persons" within the meaning of Va. Code Ann. §59.1-200(A).

187. Volkswagen violated the Virginia Consumer Protection Act, which prohibits "... (5) misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; ... (8) advertising goods or services with intent not to sell them as advertised ...; [and] (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction[.]" Va. Code Ann. §59.1-200(A).

188. These representations and/or omissions have deceived and are likely to deceive Plaintiff Schumacher, the Virginia Subclass, and consumers across the country in connection with their decision to purchase Class Vehicles. Volkswagen's representations and/or omissions were material and constituted a substantial and material factor in Plaintiff Schumacher's decision to

purchase their Class Vehicle. Had Plaintiff Schumacher and Virginia Subclass members known the actual facts, they would not have purchased the Class Vehicles and/or would have paid less for them.

189. Volkswagen, directly and indirectly, has engaged in substantially similar conduct with respect to each Plaintiff and to each member of the Virginia Subclass.

190. Plaintiff Schumacher and Virginia Subclass members suffered injury in fact and lost money and/or property as a result of Volkswagen's Violations of the Virginia Consumer Protection Act. Plaintiff Schumacher and Virginia Subclass members suffered harm when each was required to pay a purchase price in excess of what they would have paid if Volkswagen had accurately disclosed the Class Vehicles' characteristics; they also suffered harm in the form of decreased resale value of the Class Vehicles.

191. As a result of Volkswagen's violations, Plaintiff Schumacher and Virginia Subclass members are entitled to three times the amount of actual damages or \$1000, whichever is greater, as well as costs and attorneys' fees. Va. Code Ann. §§59.1-204(a), (b).

NINTH CLAIM
Unjust Enrichment

192. Plaintiffs incorporate by reference each preceding and succeeding paragraph.

193. Plaintiffs bring this claim for unjust enrichment on behalf of the nationwide Class under the common law of unjust enrichment, as there are no true conflicts (case-dispositive differences) among various states' laws of unjust enrichment.

194. In the alternative, Plaintiffs bring this claim on behalf of the nationwide Class under Virginia law, because the Defendants' United States operations are headquartered in Virginia and Virginia has the most significant relationship to the issues and facts relevant to this claim.

195. Volkswagen received and retained a benefit from the Plaintiffs and inequity has resulted.

196. Volkswagen benefitted through its unjust conduct, by selling Class Vehicles subject

to the misrepresentation that they were EPA- and/or CARB-compliant and by failing to disclose its use of a defeat device in these vehicles.

197. Plaintiffs, were charged a premium based on this misrepresentation, overpaid for these vehicles as a result, and/or would not have purchased these vehicles at all had their noncompliance with federal and state emissions laws been disclosed.

198. It is inequitable for Volkswagen to retain these benefits.

199. Plaintiffs do not have an adequate remedy at law.

200. As a result of Volkswagen's conduct, the amount of its unjust enrichment should be disgorged, in an amount to be proven at trial.

TENTH CLAIM
Unjust Enrichment

201. Plaintiffs incorporate by reference each preceding and succeeding paragraph.

202. Plaintiffs bring this claim for unjust enrichment on behalf of the nationwide Class under the common law of fraudulent concealment, as there are no true conflicts (case-dispositive differences) among various states' laws of fraudulent concealment.

203. In the alternative, Plaintiffs bring this claim on behalf of the nationwide Class under Virginia law, because the Defendants' United States operations are headquartered in Virginia and Virginia has the most significant relationship to the issues and facts relevant to this claim.

204. Volkswagen concealed and suppressed the material facts that the Class Vehicles did not comply with federal and state emissions laws and were spewing illegal amounts of NOx when they were represented to be EPA- and/or CARB-compliant. It also concealed and suppressed the material fact that the Class Vehicles were equipped with a defeat device that prevented their proper testing under laboratory conditions for compliance with federal and state emissions laws and regulations.

205. Volkswagen took the various steps described herein to effectuate that concealment, such as false advertising and in false statements of compliance with federal and state emissions

laws and regulations affixed to each of the Class Vehicles

206. Volkswagen took steps to ensure that its employees did not reveal these concealed facts to federal and state environmental regulators.

207. Volkswagen had a duty to disclose the concealed information because it:

- Had exclusive and/or far superior knowledge and access to the facts than Plaintiffs and Class Members, and it knew the facts were not known to or reasonably discoverable by Plaintiffs and the Class;
- Intentionally concealed the foregoing from Plaintiffs; and
- Made incomplete representations about the compliance of the Class Vehicles with federal and state emissions laws and regulations, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

208. These omitted and concealed facts were material because they would be relied on by a reasonable person purchasing, leasing or retaining the Class Vehicles, and because they directly impact the price paid for the Class Vehicles and their resale value. Whether the Class Vehicles comply with federal and state emissions laws and regulations is a material concern to a consumer. Plaintiffs and Class Members trusted Volkswagen not to sell or lease them vehicles that were non-compliant.

209. Volkswagen concealed and suppressed these material facts to falsely assure purchasers and consumers that the Class Vehicles complied with federal and state emissions laws and regulations, as represented by Volkswagen and reasonably expected by consumers.

210. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to protect its profits and to avoid recalls that would hurt the brand image of the Class Vehicles and cost Volkswagen money. Volkswagen concealed these facts at the expense of Plaintiffs and the Class.

211. Plaintiffs and the Class were unaware of these omitted material facts, and would not have acted as they did if they had known of the concealed and/or suppressed information.

212. Had they been aware of the non-compliance of the Class Vehicles with federal and state emissions laws and regulations and Volkswagen's callous disregard for those laws and regulations, Plaintiffs and the Class either would have paid less for their Class Vehicles or would not have purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result of Volkswagen's fraudulent concealment.

213. Because of the concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage because they own vehicles that diminished in value as a result of Volkswagen's concealment of, and failure to timely disclose, the non-compliance of the Class Vehicles with federal and state emissions laws and regulations.

214. The value of all Class members' Class Vehicles has diminished as a result of Volkswagen's fraudulent concealment of the non-compliance of the Class Vehicles with federal and state emissions laws and regulations and has made any reasonable consumer reluctant to purchase any of the Class Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

215. Accordingly, Volkswagen is liable to the Class for their damages in an amount to be proven at trial.

216. Volkswagen's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being, and with the aim of enriching Volkswagen. Volkswagen's conduct, which exhibits the highest degree of reprehensibility, being intentional, continuous, placing others at risk of death and injury, and affecting public safety, warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment on their behalf and on behalf of the Class and the California and Virginia Subclasses, and:

A. Order the appointment of an independent External Compliance Monitor to monitor

Volkswagen's compliance with federal and state environmental laws;

B. Order Volkswagen to pay a portion of its annual net profits into an independent fund administered by third parties approved by the Court who can disburse the funds to non-profit organizations that seek to monitor, educate people about, and/or remediate the deleterious environmental effects of vehicular diesel fuel emissions;

C. Order that this action may proceed as a class action, with Plaintiffs as the designated Class representatives for the Class; Plaintiffs Bourn, Watson, and Verner as designated Class representatives for the California Subclass; Plaintiff Schumacher as designated Class representative for the Virginia Subclass, and Plaintiffs' counsel as Class and Subclass Counsel;

D. Adjudge and decree that Volkswagen has violated the CAA, California Pollution Control laws, the Sherman Act, RICO, the Magnuson-Moss Act, the CLRA, California's Unfair Competition Law, California's False Advertising Law; the Virginia Consumer Protection Act, and the common law of unjust enrichment and fraudulent concealment and that Plaintiffs and the members of the Class and the California and Virginia Subclasses have been injured in their business and property as a result of Volkswagen's violations;

E. Order that Plaintiffs and the members of the National Class and California Subclass recover damages sustained by them, to the extent provided by law, and that a judgment in favor of Plaintiffs and the Class and the California and Virginia Subclasses be entered against Volkswagen in an amount to be trebled in accordance with such laws;

F. To the extent provided by law, enjoin and restrain Volkswagen, its subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and employees thereof and all other persons acting or claiming to act on their behalf from continuing to violate the CAA, California Pollution Control laws, the Sherman Act, RICO, the Magnuson-Moss Act, CLRA, California's Unfair Competition Law, California's False Advertising Law, the Virginia Consumer Protection Act, and the common law of unjust enrichment and fraudulent concealment;

G. Order Volkswagen to pay restitution or damages to Plaintiffs and members of the Class and the California and Virginia Subclasses and to disgorge the profits unlawfully acquired and retained by Volkswagen;

H. Award Plaintiffs and members of the Class and the California and Virginia Subclasses pre-judgment and post-judgment interest, and order that such interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

I. Award Plaintiffs and members of the Class and the California and Virginia Subclasses their costs of this suit, including reasonable attorneys' fees as provided by law; and

J. Order such other or further relief as may be just and proper.

IX. JURY TRIAL DEMAND.

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all of the claims asserted in this Complaint so triable.

DATED: October 6, 2015

Respectfully submitted,

By:



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Harvey B. Cohen (VSB No. 06440)
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*Counsel for Plaintiffs and the Putative Class and
Subclasses*

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
 MARIA BOURN, DAVID WATSON, STEPHNEN VERNER and MARK SCHUMACHER, on behalf of themselves and all others similarly situated

DEFENDANTS
 VOLKSWAGEN AG, VOLKSWAGEN OF AMERICA GROUP, INC., VOLKSWAGEN OF AMERICA, INC., AUDI OF AMERICA, LLC and AUDI AG

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

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Bernard J. DiMuro, Esquire; DiMuroGinsberg, P.C.
 1101 King Street, Suite 610
 Alexandria, VA 22314 (703) 684-4333

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

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

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

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

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

| | | | | | |
|---|--|---|--|---|---|
| <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 | PERSONAL INJURY <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 | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <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 | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <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 | CIVIL RIGHTS <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 | PRISONER PETITIONS <input type="checkbox"/> Habeas Corpus: <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 <input type="checkbox"/> Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | FEDERAL TAX SUITS <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):
 15 USC §2; 18 USC §1961

Brief description of cause:
 Anti-trust/FICO

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Liam O'Grady DOCKET NUMBER 1:15cv1223

DATE
 10/06/2015

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Court Name: United States District Court
Division: 1
Receipt Number: 14683054524
Cashier ID: rbroaden
Transaction Date: 10/06/2015
Payer Name: DIMURO GINSBERG

CIVIL FILING FEE
For: DIMURO GINSBERG
Amount: \$400.00

CHECK
Remitter: DIMURO GINSBERG
Check/Money Order Num: 18532
Amt Tendered: \$400.00

Total Due: \$400.00
Total Tendered: \$400.00
Change Amt: \$0.00

FILING FEE
115CV1295

EXHIBIT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Volkswagen AG
Audi AG
Volkswagen Group of America, Inc.
Thru:

David Geanacopoulos
Executive Vice President Public Affairs and General Counsel
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

Stuart Johnson
General Manager
Engineering and Environmental Office
Volkswagen Group of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Volkswagen AG, Audi AG, and Volkswagen Group of America (collectively, VW) for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that VW 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 bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist 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). Additionally, the EPA has determined that, due to the existence of the defeat

devices in these vehicles, these vehicles do not conform in all material respects to the vehicle specifications described in the applications for the certificates of conformity that purportedly cover them. Therefore, VW also violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing these vehicles, or for causing any of the foregoing acts.

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress’ purpose in creating the CAA, in part, was “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2). The CAA and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of nitrogen oxides (NO_x) and other pollutants from mobile sources of air pollution. Nitrogen oxides are a family of highly reactive gases that play a major role in the atmospheric reactions with volatile organic compounds (VOCs) that produce ozone (smog) on hot summer days. Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. Breathing ozone can also worsen bronchitis, emphysema, and asthma. Children are at greatest risk of experiencing negative health impacts from exposure to ozone.

The EPA’s allegations here concern light-duty motor vehicles for which 40 C.F.R. Part 86 sets emission standards and test procedures and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. Light-duty vehicles must satisfy emission standards for certain air pollutants, including NO_x. 40 C.F.R. § 86.1811-04. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity (COCs), and thereby approves the introduction of vehicles into United States commerce.

To obtain a COC, a light-duty vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into United States commerce. 40 C.F.R. § 86.1843-01. The COC application must include, among other things, a list of all auxiliary emission control devices (AECDs) installed on the vehicles. 40 C.F.R. § 86.1844-01(d)(11). An AECD is “any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.” 40 C.F.R. § 86.1803-01. The COC application must also include “a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD that results in a reduction in effectiveness of the emission control system, and [a] rationale for why it is not a defeat device.” 40 C.F.R. § 86.1844-01(d)(11).

A defeat device is an AECD “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and

use, unless: (1) Such conditions are substantially included in the Federal emission test procedure; (2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; (3) The AECD does not go beyond the requirements of engine starting; or (4) The AECD applies only for emergency vehicles” 40 C.F.R. § 86.1803-01.

Motor vehicles equipped with defeat devices, such as those at issue here, cannot be certified. EPA, *Advisory Circular Number 24: Prohibition on use of Emission Control Defeat Device* (Dec. 11, 1972); *see also* 40 C.F.R. §§ 86-1809-01, 86-1809-10, 86-1809-12. Electronic control systems which may receive inputs from multiple sensors and control multiple actuators that affect the emission control system’s performance are AECDs. EPA, *Advisory Circular Number 24-2: Prohibition of Emission Control Defeat Devices – Optional Objective Criteria* (Dec. 6, 1978). “Such elements of design could be control system logic (i.e., computer software), and/or calibrations, and/or hardware items.” *Id.*

“Vehicles are covered by a certificate of conformity only if they are in all material respects as described in the manufacturer’s application for certification” 40 C.F.R. § 86.1848-10(c)(6). Similarly, a COC issued by EPA, including those issued to VW, state expressly, “[t]his certificate covers only those new motor vehicles or vehicle engines which conform, in all material respects, to the design specifications” described in the application for that COC. *See also* 40 C.F.R. §§ 86.1844-01 (listing required content for COC applications), 86.1848-01(b) (authorizing the EPA to issue COCs on any terms that are necessary or appropriate to assure that new motor vehicles satisfy the requirements of the CAA and its regulations).

The CAA makes it a violation “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 or 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 under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). Additionally, manufacturers are prohibited from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing, any new motor vehicle unless that vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1); 40 C.F.R. § 86.1854-12(a)(1). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

Alleged Violations

Each VW vehicle identified by the table below has AECDs that were not described in the application for the COC that purportedly covers the vehicle. Specifically, VW manufactured and installed software in the electronic control module (ECM) of these vehicles that sensed when the vehicle was being tested for compliance with EPA emission standards. For ease of reference, the EPA is calling this the “switch.” The “switch” senses whether the vehicle is being tested or not based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure. These inputs precisely track the parameters of the federal test procedure used for emission testing for EPA certification purposes. During EPA

emission testing, the vehicles' ECM ran software which produced compliant emission results under an ECM calibration that VW referred to as the "dyno calibration" (referring to the equipment used in emissions testing, called a dynamometer). At all other times during normal vehicle operation, the "switch" was activated and the vehicle ECM software ran a separate "road calibration" which reduced the effectiveness of the emission control system (specifically the selective catalytic reduction or the lean NOx trap). As a result, emissions of NOx increased by a factor of 10 to 40 times above the EPA compliant levels, depending on the type of drive cycle (e.g., city, highway).

The California Air Resources Board (CARB) and the EPA were alerted to emissions problems with these vehicles in May 2014 when the West Virginia University's (WVU) Center for Alternative Fuels, Engines & Emissions published results of a study commissioned by the International Council on Clean Transportation that found significantly higher in-use emissions from two light duty diesel vehicles (a 2012 Jetta and a 2013 Passat). Over the course of the year following the publication of the WVU study, VW continued to assert to CARB and the EPA that the increased emissions from these vehicles could be attributed to various technical issues and unexpected in-use conditions. VW issued a voluntary recall in December 2014 to address the issue. CARB, in coordination with the EPA, conducted follow up testing of these vehicles both in the laboratory and during normal road operation to confirm the efficacy of the recall. When the testing showed only a limited benefit to the recall, CARB broadened the testing to pinpoint the exact technical nature of the vehicles' poor performance, and to investigate why the vehicles' onboard diagnostic system was not detecting the increased emissions. None of the potential technical issues suggested by VW explained the higher test results consistently confirmed during CARB's testing. It became clear that CARB and the EPA would not approve certificates of conformity for VW's 2016 model year diesel vehicles until VW could adequately explain the anomalous emissions and ensure the agencies that the 2016 model year vehicles would not have similar issues. Only then did VW admit it had designed and installed a defeat device in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emissions testing.

VW knew or should have known that its "road calibration" and "switch" together bypass, defeat, or render inoperative elements of the vehicle design related to compliance with the CAA emission standards. This is apparent given the design of these defeat devices. As described above, the software was designed to track the parameters of the federal test procedure and cause emission control systems to underperform when the software determined that the vehicle was not undergoing the federal test procedure.

VW's "road calibration" and "switch" are AECs¹ that were neither described nor justified in the applicable COC applications, and are illegal defeat devices. Therefore each vehicle identified by the table below does not conform in a material respect to the vehicle specifications described in the COC application. As such, VW violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) one of the hundreds of thousands of new motor vehicles within these test groups. Additionally, VW

¹ There may be numerous engine maps associated with VW's "road calibration" that are AECs, and that may also be defeat devices. For ease of description, the EPA is referring to these maps collectively as the "road calibration."

violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), each time it manufactured and installed into these vehicles an ECM equipped with the “switch” and “road calibration.”

The vehicles are identified by the table below. All vehicles are equipped with 2.0 liter diesel engines.

| Model Year | EPA Test Group | Make and Model(s) |
|------------|----------------|---|
| 2009 | 9VWXV02.035N | VW Jetta, VW Jetta Sportwagen |
| 2009 | 9VWXV02.0U5N | VW Jetta, VW Jetta Sportwagen |
| 2010 | AVWXV02.0U5N | VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2011 | BVWXV02.0U5N | VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2012 | CVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2012 | CVWXV02.0U4S | VW Passat |
| 2013 | DVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2013 | DVWXV02.0U4S | VW Passat |
| 2014 | EVWXV02.0U5N | VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3 |
| 2014 | EVWXV02.0U4S | VW Passat |
| 2015 | FVGAV02.0VAL | VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3 |

Enforcement

The EPA’s investigation into this matter is continuing. The above table represents specific violations that the EPA believes, at this point, are sufficiently supported by evidence to warrant the allegations in this NOV. The EPA may find additional violations as the investigation continues.

The EPA is authorized to refer this matter to the United States Department of Justice for initiation of appropriate enforcement action. Among other things, persons who violate section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to a civil penalty of up to \$3,750 for each violation that occurred on or after January 13, 2009;^[1] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. In addition, any manufacturer who, on or after January 13, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused any of the foregoing acts with respect to any new motor vehicle that was not covered by an EPA-issued COC is subject, among other things, to a civil penalty of up to \$37,500 for each violation.^[2] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. The EPA may seek, and district courts may order, equitable remedies to further address these alleged violations. CAA § 204(a), 42 U.S.C. § 7523(a).

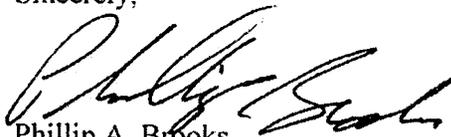
^[1] \$2,750 for violations occurring prior to January 13, 2009.

^[2] \$32,500 for violations occurring prior to January 13, 2009.

The EPA is available to discuss this matter with you. Please contact Meetu Kaul, the EPA attorney assigned to this matter, to discuss this NOV. Ms. Kaul can be reached as follows:

Meetu Kaul
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Avenue, NW
William Jefferson Clinton Federal Building
Washington, DC 20460
(202) 564-5472
kaul.meetu@epa.gov

Sincerely,



Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement

Copy:

Todd Sax, California Air Resources Board
Walter Benjamin Fisherow, United States Department of Justice
Stuart Drake, Kirkland & Ellis LLP

EXHIBIT 2

ARB LETTER TO VW



Matthew Rodriguez
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chair
9480 Telstar Avenue, Suite 4
El Monte, California 91731 • www.arb.ca.gov



Edmund G. Brown Jr.
Governor

Reference No. IUC-2015-007

September 18, 2015

Volkswagen AG
Audi AG
Volkswagen Group of America, Inc.
Through:

David Geanacopoulos
Executive Vice President and General Counsel, Government Affairs
Volkswagen Group of America
2200 Ferdinand Porsche Drive
Herndon, VA 20171

Stuart Johnson
General Manager
Engineering and Environmental Office
Volkswagen Group of America
3800 Hamlin Road
Auburn Hills, MI 48326

Re: Admission of Defeat Device and California Air Resources Board's Requests

Dear Mr. Geanacopoulos and Mr. Johnson:

In order to protect public health and the environment from harmful pollutants, the California Air Resources Board (CARB) rigorously implements its vehicle regulations through its certification, in use compliance, and enforcement programs. In addition to the new vehicle certification process, CARB regularly tests automobiles to ensure their emissions performance is as expected throughout their useful life, and performs investigative testing if warranted. CARB was engaged in dialogue with our European counterparts concerning high in use emissions from light duty diesels. CARB deployed a number of efforts using portable measurement systems and other approaches to increase our understanding for the California fleet. In 2014, the International Council for Clean Transportation (ICCT) and West Virginia University (WVU) identified through their test program, and brought to the CARB's and the United States Environmental Protection Agency's (EPA) attention, concerns of elevated oxides of nitrogen (NOx) emissions over real world driving. The ICCT actions were consistent and

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

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Mr. Geanacopoulos and Mr. Johnson:
September 18, 2015
Page 2

complementary to our activities. This prompted CARB to start an investigation and discussions with the Volkswagen Group of America (VW) on the reasons behind these high NOx emissions observed on their 2.0 liter diesel vehicles over real world driving conditions. As you know, these discussions over several months culminated in VW's admission in early September 2015 that it has, since model year 2009, employed a defeat device to circumvent CARB and the EPA emission test procedures.

VW initiated testing to replicate the ICCT/WVU testing and identify the technical reasons for the high on-road emissions. VW shared the results of this testing and a proposed recalibration fix for the Gen1 (Lean NOx Trap technology) and Gen2 (Selective Catalytic Reduction (SCR) technology) with CARB staff on December 2, 2014. Based on this meeting, CARB and EPA at that time agreed that VW could implement the software recall; however, CARB cautioned VW that if our confirmatory testing showed that the fix did not address the on-road NOx issues, they would have to conduct another recall. Based on this meeting, VW initiated a voluntary recall in December 2014 which, according to VW, affected approximately 500,000 vehicles in the United States (~50,000 in California). The recall affected all 2009 to 2014 model-year diesel fueled vehicles equipped with Gen1 and Gen2 technology. This recall was claimed to have fixed among other things, the increased real world driving NOx issue.

CARB commenced confirmatory testing on May 6, 2015 to determine the efficacy of the recall on both the Gen1 and Gen2 vehicles. CARB confirmatory testing was completed on a 2012 model-year Gen2 VW, test group CVWX02.0U4S, to be followed with Gen1 testing. CARB staff tested this vehicle on required certification cycles (FTP, US06 and HWFET) and over-the-road using a Portable Emission Measurement Systems (PEMS). On some certification cycles, the recall calibration resulted in the vehicle failing the NOx standard. Over-the-road PEMS testing showed that the recall calibration did reduce the emissions to some degree but NOx emissions were still significantly higher than expected.

To have a more controlled evaluation of the high NOx observed over the road, CARB developed a special dynamometer cycle which consisted of driving the Phase 2 portion of the FTP repeatedly. This special cycle revealed that VW's recall calibration did increase Diesel Exhaust Fluid (DEF) dosing upon initial startup; however, dosing was not sufficient to keep NOx emission levels from rising throughout the cycle. This resulted in uncontrolled NOx emissions despite the SCR reaching sufficient operating temperatures.

CARB shared its test results with VW on July 8, 2015. CARB also shared its results with the EPA. Several technical meetings with VW followed where VW disclosed that Gen1, Gen2 and the 2015 model-year improved SCR vehicle (known as the Gen3) had a second calibration intended to run only during certification testing. During a meeting on September 3, 2015, VW admitted to CARB and EPA staff that these vehicles were

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California Environmental Protection Agency

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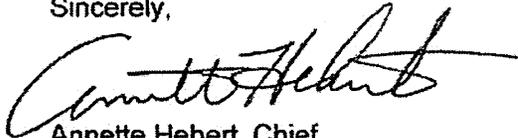
Mr. Geanacopoulos and Mr. Johnson:
September 18, 2015
Page 3

designed and manufactured with a defeat device to bypass, defeat, or render inoperative elements of the vehicles' emission control system. This defeat device was neither described nor justified in the certification applications submitted to EPA and CARB. Therefore, each vehicle so equipped would not be covered by a valid federal Certificate of Conformity (COC) or CARB Executive Order (EO) and would be in violation of federal and state law.

Based upon our testing and discussions with VW, CARB has determined that the previous recall did not address the high on-road NOx emissions, and also resulted in the vehicle failing certification standards. Therefore, the recall is deemed ineffective and is deemed unapproved. VW must immediately initiate discussions with CARB to determine the appropriate corrective action to rectify the emission non-compliance and return these vehicles to the claimed certified configuration. CARB program and enforcement staff is prepared to work closely with VW to find corrective actions to bring these vehicles into compliance.

CARB has also initiated an enforcement investigation of VW regarding all model-year 2009 through 2015 light-duty diesel vehicles equipped with 2.0 liter engines. We expect VW's full cooperation in this investigation so this issue can be addressed expeditiously and appropriately.

Sincerely,



Annette Hebert, Chief
Emissions Compliance, Automotive Regulations and Science Division

cc: Mr. Byron Bunker, Director
Compliance Division
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency

Mr. Linc Wehrly, Director
Environmental Protection Agency
Light-Duty Vehicle Center
2000 Traverwood Drive
Ann Arbor, MI 48105

Dr. Todd P. Sax, Chief
Enforcement Division
California Air Resources Board

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

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EXHIBIT 3

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300
AN EQUAL OPPORTUNITY EMPLOYER

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EPA-335



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DITLO, CLARENCE
PUBLIC INTEREST RESEARCH GRP
2000 P ST, NW
WASHINGTON

DC 20036

Defeat Devices



Environmental News

Holmes (202) 755-0710
Fitzwater (202) 755-0344

FOR IMMEDIATE RELEASE P.M.'S MONDAY, JULY 23, 1973

EPA REFERS INVESTIGATION OF VOLKSWAGEN TO JUSTICE

The Environmental Protection Agency has referred to the Justice Department for appropriate legal action its investigation of the existence of unauthorized emission control "defeat devices" on certain 1973 Volkswagens.

On July 12, 1972, EPA informed all auto manufacturers selling cars in the U.S. that any defeat devices not adequately described in the 1973 auto certification applications should be reported to EPA, and that any cars produced with unidentified devices would not be considered certified. Volkswagen did not respond to the July 12 letter.

Volkswagen did, however, list the existence of such devices in its application for Federal certification of 1974 cars. EPA certifies all cars sold in the United States as conforming to Federal auto emission standards. No new cars can be sold in the U.S. without that certification.

(more)

-2-

EPA rejected the Volkswagen application for 1974 certification because of the listing of the "defeat devices." Following that rejection, Volkswagen notified EPA on March 7, 1973, that similar devices had been installed on certain 1973 models.

Volkswagen subsequently agreed to remove the devices from 1973 production cars as of May 1, 1973.

In his July 16, 1973, letter of referral to Attorney General Elliot L. Richardson, EPA Acting Assistant Administrator for Enforcement and General Counsel Alan G. Kirk, states: "We believe that Volkswagen's failure to report the existence and description of the defeat devices, as requested by the Administrator's July letter, and its sale of vehicles equipped with such devices may be inconsistent with the terms of the certificate and in violation of provisions of the Clean Air Act."

The "defeat devices" consist of two temperature sensing switches which deactivate part of the emissions control system. One cuts out the exhaust gas recirculation system at low temperatures on some VW squareback and fastback models. The other overrides the transmission controlled spark advance system at low temperatures on some bus-type station wagons.

Prior to their removal, Volkswagen sold approximately 25,000 vehicles equipped with the defeat devices.

Section 203 of the Clean Air Act provides civil penalties for failing to provide information as required by EPA, and for the sale of uncertified vehicles.

Section 205 of the Act provides for a civil penalty of not more than \$10,000 for each vehicle in violation of the Section 203 provisions.

#

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

Dear Mr.

It has been brought to my attention that for the 1973 model year some automobile manufacturers intend to install on new cars certain devices the purpose of which is to wholly or partially disable portions of the emission control systems. The purpose of this letter is to advise you of the course of action that we will pursue to assure that the use of such devices is not inconsistent with the Clean Air Act.

To put this matter into context, we fully realize that the control of emissions on a modern automobile is a highly complex matter. It frequently involves the use of sophisticated devices that modulate spark advance, throttle setting, or exhaust gas recirculation to assure that vehicle emissions are adequately controlled under varying operating conditions and throughout the vehicle's useful life. To the extent that such devices operate in an essentially similar manner when the prototype vehicle is being tested for compliance with emission standards and when the vehicle is being operated under typical urban driving conditions, their use may be appropriate. Their use may also be appropriate to the extent that such devices are used to protect the vehicle or the emission control system against damage that may occur under unusual circumstances, or are needed to assure safe vehicle operation under unusual and short-term circumstances.

Two general classes of devices that some manufacturers are planning to install in 1973 vehicles warrant special scrutiny. I am referring to ambient temperature related devices which are designed so that the entire emission control system is operative when the car is tested under the standard 68°-86° F. test conditions, but which modify or disable such control systems when the vehicle is outside of that range; and to accessory related devices which do the same thing when accessories that are not operative during the official test are turned on.

The purpose and effect of these kinds of devices require careful study. As you know, manufacturers applying for certification of 1973 model vehicles are presently required to supply detailed data on all emission control related sensors, devices, switches, and related components. I have directed our technical staff to make a review of all Final Applications for 1973 model year certification for the purpose of evaluating the justification for all sensors, switches, and related devices that are planned to be installed on new 1973 model year cars. On the basis of this review, you will be notified if the Agency concludes that the use of any such sensor or device is inconsistent with the intent of the Clean Air Act. Fifteen days after such notification, any new vehicles leaving your assembly lines will not be allowed to be equipped with any operative sensors or devices specifically disallowed. Accordingly, if your company plans to use sensors or devices in 1973 model vehicles which may adversely affect emission control under conditions or during operations likely to occur in actual use, I strongly urge that you promptly undertake the necessary technical work that will allow you to remove such sensors or devices from production vehicles, or to render them inoperative to the satisfaction of the Administrator if they cannot be physically removed after the 15-day period following notification expires.

To effectuate this procedure for review of sensors or emission control related devices used on 1973 models, all certificates of conformity issued with respect to 1973 vehicles will be subject to the terms and conditions set forth as Appendix A to this letter.

You may wish to review the material that you have already submitted to our technical staff in support of your Final Application for Certification of 1973 model vehicles in order to make certain that such data is complete as to the identification of all emission control related sensors or devices or in terms of a justification for their use. If you conclude that data previously submitted is incomplete, I urge you to supply the Director of the Division of Certification and Surveillance in Ann Arbor, Michigan, with such supplemental material as you wish to have considered in our evaluation of this matter as it affects your vehicles. Such additional information should reach us within 30 days of the date of this letter, to be effectively considered in this review. No certificate of conformity issued by this Agency will be deemed to cover any vehicle or class of vehicles which have installed on them devices of this type which were not described in your Final Application, or the function of which was so inadequately described as not to allow us to ascertain their true purpose or operational characteristics.

3

To control such practices in the future, we intend shortly to propose new regulations which will provide that, beginning with 1974 model year vehicles, emission control related sensors or devices can be installed in new vehicles only with the advance approval of the Environmental Protection Agency. The burden of proof will be on the manufacturer to demonstrate in each instance that any such sensors, switches, or devices do not adversely affect emission control under conditions or during operations likely to occur in actual use.

Sincerely yours,

William D. Ruckelshaus
Administrator

Enclosure

APPENDIX A

This certificate of conformity is issued subject to the following conditions:

1. As soon as practicable after issuance of this certificate the Administrator will undertake an examination of the purpose and effect of any system, device, or scheme employed by the manufacturer which wholly or partially disables any portion of the emission control system installed on any vehicle(s) or engines(s) covered by this certificate or which otherwise adversely affects the emission control performance of such vehicle(s) or engines(s) during any driving or operating condition likely to occur in actual use.

2. Upon completion of the examination, the Administrator may issue a notice to the manufacturer that the use of any such system, device, or scheme is inconsistent with the intent of the Clean Air Act.

3. No vehicle or engine manufactured after the 15th day after the date of issuance of the notice by the Administrator (or such other day as the Administrator may prescribe in such notice) shall be deemed to be covered by this certificate of conformity, if it employs any system, device, or scheme the use of which the Administrator has determined to be inconsistent with the intent of the Clean Air Act under paragraph 2.

4. No vehicle or engine manufactured at any time shall be deemed to be covered by this certificate of conformity if it employs any system, device, or scheme which (a) wholly or partially disables any portion of the emission control system installed on the vehicle or the engine or which otherwise affects the emission control performance of such vehicle(s) or engine(s) during any driving or operating condition likely to occur in actual use, and (b) has not been included in the manufacturer's Part II application for certification.

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|------------------------------|---|------------------|
| United States of America, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | |
| Volkswagen of America, Inc., |) | |
| |) | |
| Defendant |) | |
| _____ |) | |

CONSENT DECREE

TABLE OF CONTENTS

I. JURISDICTION AND VENUE 2

II. DEFINITIONS 2

III. APPLICABILITY 5

IV. COMPLIANCE REQUIREMENTS 5

V. REPORTING 7

VI. RECORD KEEPING 8

VII. CIVIL PENALTY 8

VIII. STIPULATED PENALTIES 9

IX. DISPUTE RESOLUTION 12

X. EFFECT OF DECREE/RESERVATION OF RIGHTS 15

XI. COSTS OF SUIT 16

XII. NOTICES 16

XIII. EFFECTIVE DATE 17

XIV. RETENTION OF JURISDICTION 18

XV. MODIFICATION AND TERMINATION 18

XVI. PUBLIC PARTICIPATION 19

XVII. SIGNATORIES/SERVICE 19

XVIII. INTEGRATION 20

XIX. FINAL JUDGMENT 20

XX. APPENDICES 20

A. Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) and by the authority of the Attorney General, filed a Complaint against defendant Volkswagen of America, Inc., a New Jersey corporation (“VWoA”) alleging that defendant violated Section 208 of the Clean Air Act (the “Act”), 42 U.S.C. § 7542, and 40 C.F.R. § 85.1903, by failing to timely file an Emissions Defect Information Report (“EDIR”) with EPA as required by 40 C.F.R. § 85.1903, regarding a defect with an emission-related component known as the “front heated oxygen sensor” in model year (“MY”) 1999 to 2001 2.0L engines in certain light duty vehicles manufactured by Volkswagen de Mexico SA. De C. V. and imported and sold by VWoA in the United States (the “Subject Vehicles”).

B. VWoA submitted an EDIR for the Subject Vehicles to EPA dated June 15, 2001, and soon thereafter implemented a voluntary recall to correct the emissions-related defect in the Subject Vehicles to: (a) reprogram the engine control module on all Subject Vehicles with updated Front Heated Oxygen Sensor control software at no charge to the Subject Vehicle Owner; and (b) inspect all Subject Vehicles and replace the defective Front Heated Oxygen Sensor if needed at no charge to the Subject Vehicle Owner. VWoA’s voluntary recall program was successfully completed.

C. VWOA has agreed to implement enhancements, not now required by 40 C.F.R. § 85.1903, to its procedures for investigating possible defects in emissions-related components of vehicles VWOA imports for sale in the United States and commensurate reporting requirements.

D. VWoA does not admit the violations alleged in the Complaint and nothing herein shall constitute an admission of liability.

E. The United States and VWoA have consented to the entry of this Consent Decree

without the trial of any issues.

F. The United States and VWOA assert, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the United States and VWOA in good faith, that the implementation of this Consent Decree will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Sections 203, 204, 205, and 208 of the Act, 42 U.S.C. §§ 7522, 7523, 7524, and 7527. Venue in this District is proper pursuant to Sections 204 and 205 of the Act, 42, U.S.C. § 7523 and 7524.

2. For purposes of this Consent Decree, VWOA agrees that the Complaint states a claim upon which relief may be granted pursuant to Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524.

II. DEFINITIONS

3. Terms which are defined in this Section (Definitions) shall have the following meanings for purposes of this Consent Decree and its Appendices. Terms which are not defined below or elsewhere in this Consent Decree or its Appendices shall have the meanings currently set forth in the Sections 202, 216, and 302 of the Act, 42 U.S.C. §§ 7521, 7550, and 7602, and any regulations promulgated under Title II of the Act, 42 U.S.C. §§ 7521-7590.

a. "Act" means the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

b. "Catalytic Converter" means the vehicle component or element of design known as the Catalytic Converter including any and all catalysts and any parts that are integral to any converter or would necessitate converter replacement if it were to fail, such as the converter shell, nipples, heat shield, and heater and warmup circuits.

c. "Certificate of Conformity" means a certificate issued by the U.S. Environmental Protection Agency pursuant to Section 206 of the Act, 42 U.S.C. § 7525.

d. "Consent Decree" or "Decree" means this Consent Decree, including any Appendices identified herein.

e. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

f. "Effective Date" of this Consent Decree is the date of its entry by the Court.

g. "Emissions Defect Information Report" or "EDIR" means the report from the manufacturer to EPA as required by 40 C.F.R. § 85.1903 and Appendix B of this Consent Decree.

h. "Emission-related Component" or "Component" means the design, materials, or workmanship in a device, system, or assembly described in the approved Application for Certification (required by 40 C.F.R. 86.1843-01 and 86.1844-01, 40 C.F.R. 86.098-22 and like provisions of subpart A of 40 C.F.R. part 85 and 40 C.F.R. part 86) including complete engines.

i. "Emission-related Defect" means a defect in design, materials, or

workmanship in a device, system, or assembly as described in the approved Application for Certification (required by 40 C.F.R. 86.1843-01 and 86.1844-01, 40 C.F.R. 86.098-22 and like provisions of subpart A of 40 C.F.R. Part 85 and 40 C.F.R. Part 86) which affects any emission-related parameter or specification as enumerated in Appendix VIII of 40 C.F.R. Part 85. For purposes of this Consent Decree an "Emission-related Defect" does not include damage caused by Owners improperly maintaining or abusing their vehicles.

j. "Engine Family" means the basic classification unit of a vehicle's product line for a single Model Year within the meaning of 40 C.F.R. § 85.2113(h).

k. "EPA" means the United States Environmental Protection Agency or any successor department or agency of the United States.

l. "Interest" means interest at the rate allowed on money judgments pursuant to 28 U.S.C. § 1961.

m. "Model Year" or "MY" means model year as defined in 40 C.F.R. § 86.082.2.

n. "Owner" shall have the same meaning as "Ultimate Purchaser" as defined by Section 216(5) of the Act, 42 U.S.C. § 7550(5).

o. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral.

p. "Parties" means the United States and VWoA.

q. "Section" means a portion of this Consent Decree identified by a Roman numeral and having multiple Paragraphs.

r. "Subject Vehicles" means those vehicles described in Appendix A.

- s. "VWoA" means Volkswagen of America, Inc., a New Jersey Corporation.
- t. "United States" means the United States of America, acting on behalf of EPA.

III. APPLICABILITY

3. This Consent Decree applies to and is binding upon the United States and upon VWoA, and its employees, contractors, agents, successors, and assigns. Unless approved by the Parties in writing, any change in VWoA's ownership or corporate status shall in no way alter VWoA's responsibilities under this Consent Decree. In any action to enforce this Consent Decree, VWOA shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees to take actions necessary to comply with the provisions of this Consent Decree.

4. VWoA shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. VWoA shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

IV. COMPLIANCE REQUIREMENTS

5. VWoA shall enhance its system for monitoring and reporting Emission-related Defects under 40 C.F.R. § 85.1903 with respect to vehicles manufactured or sold by VWOA pursuant to a Certificate of Conformity by, within sixty (60) Days from the Effective Date of this Consent Decree, establishing and implementing the protocols set forth in Appendix B (Emission-Related Defect Monitoring and Reporting Protocols).

6. If in the future VWOA identifies a design or manufacturing defect that prevents motor vehicles from meeting the applicable standards of 40 C.F.R. Part 86 by obtaining information about Emission-related parts or systems that have failed and the specific mode or mechanism of the failure, VWOA shall correct the defect as soon as reasonably possible for any future production of motor vehicles in every Engine Family affected by the defect. The obligation to correct the defect applies without regard to whether VWOA is required to conduct a defect investigation pursuant to this Consent Decree or to submit a defect report.

7. VWOA shall send a status report to EPA once a year which describes all actions taken by VWOA to comply with the terms of this Consent Decree during the reporting period. Status reports shall be submitted to EPA no later than January 31 and cover the immediately preceding calendar year. The status report shall provide the following specific information, to the extent that it is applicable and available:

- a. Corporate name;
- b. The name and title of the authorized representative to contact regarding information in the status report;
- c. A description of each investigation of an Emission-related Component that VWOA commenced, continued, or concluded during the reporting period, including the applicable part number and a description of the Emission-related Component being investigated;
- d. The status of each investigation VWOA commenced, continued or concluded during the reporting period;
- e. A description of the potentially affected vehicles, including Engine Families, model, Model Year, and number of vehicles manufactured;

- f. An estimate of the number and/or percentage of each class or category of vehicles that have or may have the Emission-related Defect, and an explanation how this number was determined;
- g. Whether an EDIR was filed and if so on what date; and
- h. If the investigation was closed or continued without filing an EDIR, the reasons for such action.

V. REPORTING

8. Unless otherwise explicitly provided in this Consent Decree, EDIRs, status reports, submissions, notifications to, or communications with the United States or VWoA shall be deemed submitted on the date they are postmarked and sent by first class mail, overnight receipt mail service, or by certified or registered mail, return receipt requested. Each EDIR, status report, or other submission required by this Consent Decree or Appendix B shall be accompanied by a transmittal letter referencing the appropriate paragraph or Appendix of this Consent Decree.

9. VWoA shall, through a duly authorized representative having knowledge of the contents of the EDIR, status report, or other submission, sign and certify under 28 U.S.C. § 1746 that:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there

are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

10. All EDIR's, status reports, or other submissions required by this Consent Decree or Appendix B shall be submitted to the persons designated in Section XII of this Consent Decree (Notices).

11. The reporting requirements of this Consent Decree do not relieve VWoA of any reporting obligation required by the Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

12. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VI. RECORD KEEPING

13. VWoA shall maintain records regarding the Emission-related Defect Monitoring and Reporting system described in Appendix B, in a form suitable for inspection, and which shall be made available to EPA upon request, including information gathered by VWoA to carry out the requirements of this Consent Decree. VWoA shall retain all such records for a period of five (5) years from the Effective Date of this Consent Decree.

14. All information and documents submitted by VWoA to the United States pursuant

to this Consent Decree shall be subject to public inspection, unless identified and supported as confidential business information by VWoA in accordance with 40 C.F.R. Part 2.

VII. CIVIL PENALTY

15. Within thirty (30) Days after the Effective Date of this Consent Decree, VWoA shall pay a civil penalty to the United States in the amount of \$1,100,000.00 together with Interest accruing from the date on which the Consent Decree is lodged with the Court.

16. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice (“DOJ”) in accordance with instructions to be provided to VWoA following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney’s Office. Any EFT received at the DOJ lockbox bank after 11:00 A.M. Eastern Time will be credited on the next business day.

17. VWoA shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-2-1-08311 and the civil action number of this case) to the United States in accordance with Section XII. of this Decree (Notices).

18. If VWoA does not pay the civil penalty payment owed to the United States within thirty (30) Days of the Effective Date of this Consent Decree, the payment is late. Late payment of the civil penalty is subject to Interest and Stipulated Penalties as provided below.

19. VWoA shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

20. The United States shall be deemed a judgment creditor for purposes of collection of this penalty.

VIII. STIPULATED PENALTIES

21. If VWoA fails to pay the civil penalty required to be paid under Section VII of this Decree (Civil Penalty) when due, VWoA shall pay a stipulated penalty of \$1,000 per day for each day that the payment is late. Late payment of the civil penalty shall be made in accordance with Paragraphs 16 and 17 of this Consent Decree. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraphs 16 and 17.

22. VWoA shall be liable for stipulated penalties to the United States for failure to comply with the requirements of this Consent Decree in the amounts set forth below.

a. For failure to establish the procedures to enhance VWoA's system for monitoring and reporting of Emission-related Defects required by Paragraph 5 within sixty (60) Days from the Effective Date of this Consent Decree: \$1,000 per day.

b. For failure to timely investigate possible Emission-related Defects, timely file an EDIR, or for failure to file an EDIR containing all available information, all as pursuant to the requirements of Appendix B:

| <u>For each violation</u> | <u>Penalty</u> |
|--|-----------------|
| 1st to 10th day | \$ 500 per day |
| 11 th to 30 th day | \$ 750 per day |
| After 30 th day | \$1,000 per day |

c. For failure to timely file an annual status report that contains all available information as required by Paragraph 7: \$500 per day.

d. For failure to correct an Emission-related Defect in any future production,

as required by Paragraph 6: \$250 per affected vehicle.

e. For failure to maintain information or make such information available to EPA as required by Paragraph 13: \$500 per day per instance.

23. The stipulated penalties provided for in this Section VIII shall be in addition to any other rights, remedies, or sanctions available to the United States for VWoA's violation of this Consent Decree or applicable law.

24. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. VWoA shall pay any Stipulated Penalties within 30 Days of receiving the United States' written demand. Interest on any unpaid balance shall thereafter accrue from the date payment became due.

25. The United States may, in its unreviewable discretion, reduce or waive stipulated penalties otherwise due the United States under this Consent Decree.

26. Stipulated Penalties and Interest shall continue to accrue as provided in Paragraph 24 during any dispute resolution as provided by Section IX, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, VWoA shall pay accrued penalties determined to be owing to the United States within 30 Days of the receipt of EPA's decision.

b. If the dispute is appealed to the Court and the United States prevails in

whole or in part, VWoA shall pay all accrued penalties determined by the Court to be owing within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, VWoA shall pay all accrued penalties determined to be owing within 15 days of receiving the final appellate court decision.

27. VWoA shall as directed by the United States in its demand, pay stipulated penalties owing to the United States by EFT in accordance with Paragraphs 16 and 17, or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08311 and United States Attorney's Office file number C105-00579, and delivered to the office of the United States Attorney for District of Columbia, Financial Litigation Unit, Judiciary Center Building, 555 Fourth Street, N.W., Washington, D.C. 20001 with a transmittal letter referencing the civil action number of this action.

28. VWoA shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

29. Subject to the provisions of Section X (Effect of Decree/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for VWoA's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Act, VWoA shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

IX. DISPUTE RESOLUTION

30. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. VWoA's failure to seek resolution of a dispute under this Section shall preclude VWoA from raising any such issue as a defense to an action by the United States to enforce any obligation of VWoA arising under this Decree.

31. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when VWoA sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement between the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, VWoA invokes formal dispute resolution procedures as set forth below.

32. Formal Dispute Resolution. VWoA shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph 31, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

33. The United States shall serve its Statement of Position within thirty (30) Days of

receipt of VWoA's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on VWoA, unless VWoA files a motion for judicial review of the dispute in accordance with the following Paragraph 34.

34. VWoA may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph 33. The motion shall contain a written statement of VWoA's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

35. The United States shall respond to VWoA's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

36. In any dispute brought under Paragraph 34, VWoA shall bear the burden of demonstrating that its position clearly complies with this Consent Decree and that VWoA is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

37. The invocation of dispute resolution procedures under this Section shall not, by

itself, extend, postpone, or affect in any way any obligation of VWOA under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 26. If VWOA does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

38. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date this Consent Decree is lodged with the Court.

39. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 38. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 38.

40. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. VWOA is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and VWOA's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits.

41. This Consent Decree does not limit or affect the rights of VWOA or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of

third parties, not party to this Consent Decree, against VWoA, except as otherwise provided by law.

42. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XI. COSTS OF SUIT

43. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by VWoA.

XII. NOTICES

44. Except as otherwise specifically provided herein, when written notification to or communication with the United States, EPA, or VWoA is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08331

For EPA:

Director
Certification and Compliance Division (6403J)
Office of Transportation and Air Quality
Office of Air and Radiation
U.S. Environmental Protection Agency
1310 L Street, N.W.
Washington, D.C. 20004

Acting Director
Air Enforcement Division (2242A)
Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Ariel Rios Building South
Washington, D.C. 20004

With a copy to:

Thomas M. Ball, Program Manager
Certification and Compliance Division
U.S. Environmental Protection Agency
2000 Traverwood
Ann Arbor, MI 48105

Angela Fitzgerald, Esq.
Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

As to VWoA:

Norbert Krause
Director, Engineering and Environmental Office
Volkswagen of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

With a copy to:

Kevin M. McDonald, Esq.
Associate Counsel
Volkswagen of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

45. All Parties to the Consent Decree may change the address for providing notices

to it by serving all other addressees identified above with a written notice setting forth the new address.

XIII. EFFECTIVE DATE

46. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XIV. RETENTION OF JURISDICTION

47. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XV, or effectuating or enforcing compliance with the terms of this Decree.

XV. MODIFICATION AND TERMINATION

48. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

49. This Consent Decree will terminate upon further order of this Court at any time after the fifth year anniversary of its Effective Date after VWoA serves upon the United States, together with all necessary supporting documentation, a Request for Termination stating that VWoA has:

- a. paid in full the civil penalties and any accrued Interest imposed by this Consent Decree;
- b. paid in full any stipulated penalties imposed by this Consent Decree; and

c. completed all other requirements of this Consent Decree.

50. Following receipt by the United States of VWoA's Request for Modification or Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether VWoA has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with EPA, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

51. If the United States, after consultation with EPA, does not agree that the Decree may be terminated, VWoA may invoke Dispute Resolution under Section IX of this Decree. VWoA shall not, however, seek Dispute Resolution of any dispute regarding termination, under Paragraph 31 of this Consent Decree, until 120 days after service of its Request for Termination.

XVI. PUBLIC PARTICIPATION

52. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.

XVII. SIGNATORIES/SERVICE

53. Each undersigned representative of VWoA and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

54. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

55. VWoA agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

56. VWoA agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XVIII. INTEGRATION

57. This Consent Decree and its Appendices constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XIX. FINAL JUDGMENT

58. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and VWoA.

XX. APPENDICES

59. The following appendices are attached to and incorporated into this Consent Decree:

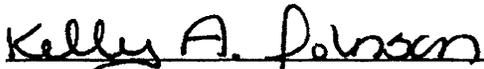
“Appendix A” is the List of Subject Vehicles.

“Appendix B” is the Emission-Related Defect Monitoring and Reporting Protocols.

Approved and entered this ___ day of _____, 2005.

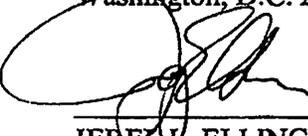
UNITED STATES DISTRICT JUDGE
For the District of Columbia

FOR PLAINTIFF, UNITED STATES OF AMERICA:



KELLY A. JOHNSON, D.C. Bar # 431714
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

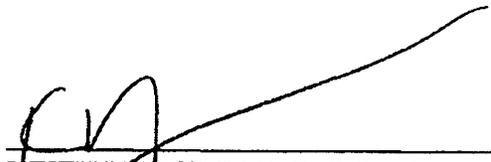
Dated: _____



JEREBELL ELLINGTON, Colorado Bar # 9696
Senior Counsel
Environmental Enforcement Section
United States Department of Justice
999 18th Street, Suite 945NT
Denver, CO 80202
Telephone: (303) 312-7321

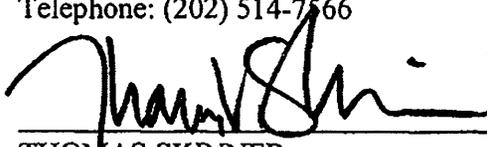
Dated: 6/7/2005

KENNETH L. WAINSTEIN, D.C. BAR # 451058
United States Attorney for the District of Columbia



KEITH V. MORGAN, D.C. Bar #422665
Assistant U. S. Attorney
Judiciary Center Building
555 Fourth Street, N.W.
Washington, D.C. 20530
Telephone: (202) 514-7566

Dated: 5.19.05



THOMAS SKINNER
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

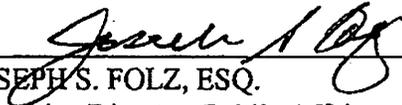
Dated: 6.5.05

FOR DEFENDANT, VOLKSWAGEN OF AMERICA, INC.



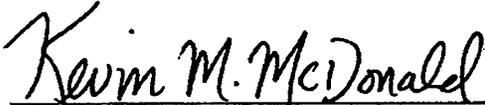
Dated: 5/16/05

NORBERT KRAUSE
Director, Engineering and Environmental Office
Volkswagen of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326



Dated: 5/13/05

JOSEPH S. FOLZ, ESQ.
Executive Director, Public Affairs,
General Counsel & Secretary
Volkswagen of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326



Dated: 5/12/05

KEVIN M. MCDONALD, ESQ.
Associate Counsel
Volkswagen of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

APPENDIX A

| Model Year | Make | Model | Engine Family |
|-----------------------|-------------|--------------------------------|----------------------|
| 1999 | Volkswagen | Golf/Jetta/New Beetle (Tier 1) | XVWXV02.0222 |
| 1999 | Volkswagen | Golf/Jetta/New Beetle (LEV) | XVWXV02.0227 |
| 2000 | Volkswagen | Golf/Jetta/New Beetle (Tier 1) | YVWXV02.0222 |
| 2000 | Volkswagen | Golf/Jetta/New Beetle (LEV) | YVWXV02.0227 |
| 2001 | Volkswagen | Golf/Jetta/New Beetle (Tier 1) | 1 VWXV02.0227 |
| 2001 | Volkswagen | Golf/Jetta/New Beetle (LEV) | 1 VWXV02.0222 |

APPENDIX B

EMISSION-RELATED DEFECT MONITORING AND REPORTING PROTOCOLS

Within the time-frame specified in the Consent Decree to which this Appendix B is attached and made a part, VWOA shall enhance its system for monitoring and reporting Emission-related Defects under 40 C.F.R. § 85.1903 with respect to vehicles manufactured or sold by VWOA pursuant to a Certificate of Conformity by implementing the following protocols for investigating and reporting Emission-related Defects.

1. Investigation of Potential Emission-related Defects.

a. VWOA shall commence an investigation to determine if an Emission-related Defect exists within a given class or category of vehicles or within an Engine Family whenever VWOA has reason to believe that the number of vehicles that may have the Emission-related Defect is equal to or exceeds the following thresholds (with percentages stated as in relation to the total number of vehicles with the class, category, or Engine Family).

i. If the Emission-related Component is a Catalytic Converter, electronic control module, or other after-treatment device: 2% or 2,000, whichever is less; or

ii. If the Emission-related Component is something other than a Catalytic Converter, electronic control module, or other after-treatment device: 4% or 4,000, whichever is less.

b. In determining whether vehicles within a given class, category, or Engine Family may have a potential Emission-related Defect for purposes of the preceding paragraph 1.a., VWoA shall consider information derived from records reflecting the sale and delivery of replacement parts to dealers. In addition, a particular vehicle shall be deemed to have a potential Emission-related Defect for purposes of the preceding paragraph 1.a. if any of the following has occurred within the particular vehicle's Useful Life:

i. A warranty claim for an Emission-related Component is paid by VWoA pursuant to a warranty issued by VWoA;

ii. VWoA receives any other information from its dealers or Owners indicating an Emission-related Defect may exist;

iii. An Emission-related component was repaired or replaced by a VWoA dealer after its sale and delivery to the ultimate purchaser.

c. VWoA's investigation shall be prompt, thorough, consider all relevant information which is available or reasonably obtainable, follow scientific and engineering principles, and be designed to obtain the information which VWoA is required to investigate or report.

d. If an Emission-related Component that has been determined to be defective has been installed in or is present in other MY vehicles or Engine Families, VWoA shall investigate whether such Emission-related Defect is in those additional MY vehicles or Engine Families. VWoA shall include the results of such investigation as part of the Defect Report.

e. If VWOA terminates an investigation after determining that the number of vehicles potentially having an Emission-related Defect is less than the thresholds specified in the preceding paragraph 1.a., and VWOA subsequently acquires other information indicating that the thresholds of paragraph 1.a. may be exceeded, VWOA shall resume its investigation and include the information from its earlier investigation to determine whether or not VWOA must submit an EDIR.

2. Reporting Emission-related Defects.

a. VWOA shall submit an EDIR to EPA whenever VWOA determines, based upon its investigation, that an Emission-related Defect exists in the number of vehicles within the class, category, or Engine Family that is equal to or exceeds the following thresholds (with percentages stated as in relation to the total number of vehicles with the class, category, or Engine Family):

i. If the Emission-related Component is a Catalytic Converter, engine control module, or other after-treatment device, and the total number of vehicles within the class, category, or Engine Family is 2,500 or less: 25 or more.

ii. If the Emission-related Component is a Catalytic Converter, electronic control module, or other after-treatment device, and the total number of vehicles within the class, category, or Engine Family is more than 2,500: 1% or 500, whichever is less.

iii. If the Emission-related Component is a component other than a Catalytic Converter, electronic control module, or other after treatment device, and the

total number of vehicles within the given class, category, or Engine Group is 2,500 or less: 50 or more.

iv. If the Emissions-related Component is a component other than a Catalytic Converter, electronic control module, or other after-treatment device, and the number of vehicles within the given class, category, or Engine Group is more than 2,500: 2% or 1,000, whichever is less.

b. VWoA shall submit an EDIR within fifteen Days of the date that the threshold criteria set forth in the preceding paragraph 2.a. are met. VWoA shall send the EDIR to:

Director
Certificate and Compliance Division
National Vehicle and Fuel Emission Laboratory
U.S. Environmental Protection Agency
2565 Plymouth Road
Ann Arbor, MI 48105

c. An EDIR shall contain the following information, to the extent that the information is available:

- i. Corporate name;
- ii. An authorized representative of VWoA for EPA to contact regarding the Emission-related Defect;
- iii. A description of the Emission-related Defect including a summary of any engineering analyses and associated data;

iv. A description of the vehicles that may have the Emission-related Defect, including engine families, models, model years, range of production dates, and number of vehicles manufactured;

v. An estimate of the number and/or percentage of each class or category of vehicles or within an Engine Family that may have the Emission-related Defect, and an explanation of how this number or percentage was determined;

vi. An estimate of the emissions impact, if any, attributable to the Emission-related Defect, the basis for such estimate, and a summary of any emission data showing the impact of the Emission-related Defect; and

vii. A description of VWoA's plan for correcting the Emission-related Defect, or an explanation of why VWoA does not believe the Emission-related Defect should be corrected.

c. VWoA shall continue its investigation until it obtains all information necessary to provide a complete EDIR. For any items not complete, VWoA shall promptly send EPA an updated or supplemental EDIR when new or additional information is available.

d. Notwithstanding the above, VWoA shall not be exempt from compliance with 40 C.F.R. § 85.1903, or any regulation amending or replacing it. Until such time that 40 CFR 85.1903 is amended or replaced, VWoA shall in accordance with 40 C.F.R. § 85.1903 file an EDIR with EPA whenever VWoA determines that a specific Emission-related Defect exists in twenty-five or more vehicles or engines of the same model year.

EXHIBIT 5

Audi TDI® - Clean Diesel Technology | Audi USA

Models Inventory Certified pre-owned **Technology** myAudi Search



Getting more from less. Audi pioneered TDI® clean diesel engines to deliver more torque, lower fuel consumption and reduce CO2 emissions, compared to equivalent gasoline engines. The result of this revolutionary engineering delivers remarkable performance, while achieving increased fuel economy.

Fuel for thought

Unleashing the power of diesel.

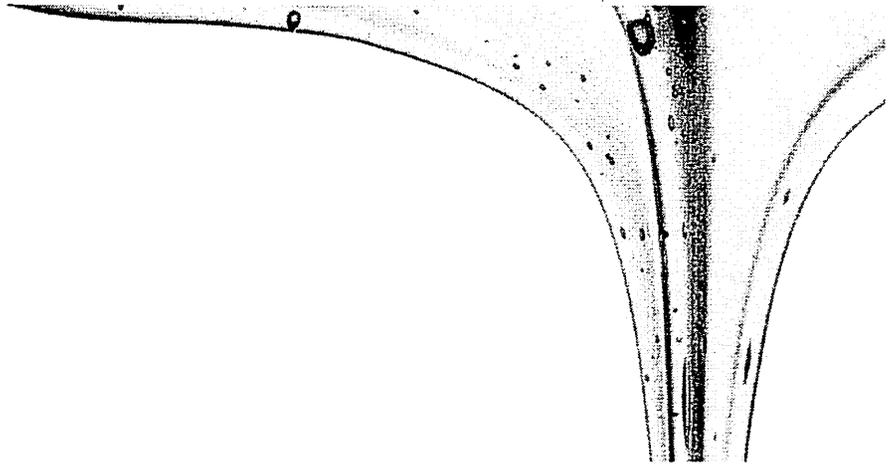


<http://www.audiusa.com/technology/efficiency/tdi/>[9/23/2015 8:53:48 AM]

Audi TDI® - Clean Diesel Technology | Audi USA

We thought you should know: Diesel sports a greater power density than traditional gasoline, which means that a gallon of diesel fuel has about 15% more energy than a comparable amount of gas, and combusts more efficiently in the engine.

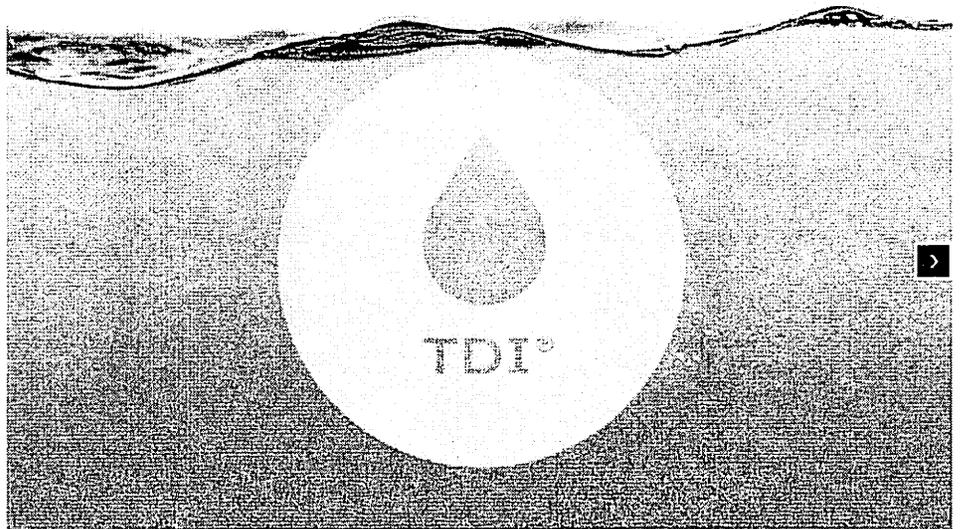
Download TDI® brochure



The science behind the intelligent choice

The art of refinement.

Given the understanding that a drop of diesel has more inherent energy than the same amount of gasoline, but they start as the exact same thing: crude oil. Take a visual look at how TDI® clean diesel is smarter.



Audi TDI® - Clean Diesel Technology | Audi USA

How far will you go?

Select your model, engine and your driving behavior to compare the difference between Audi TDI® clean diesel engines and conventional gasoline engines.

* Disclaimer

Vehicle model

A6

Available Engines

3.0 TDI®

2.0 TFSI®

Your Driving Behavior

Approximate miles per year:

15k

If:

30k

Projected years of ownership:

10

1

10

City Highway Combined

Benefits of TDI® clean diesel (vs. gas model)

Based on EPA estimates and assumptions. Your savings, mileage and results will vary. For key info on fuel economy and assumptions, click here.

Lower estimated CO2 emissions

+17%

In addition to greater torque and fuel efficiency, CO2 emissions are 17% lower.

Highway Estimated fuel economy

+9%

Audi TDI® - Clean Diesel Technology | Audi USA

With Extra fuel economy, you get further on less.

Fewer estimated trips to the pump

+5%

The more you don't spend pumping, the more money you're doing with, anything you want.

Estimated fuel savings

\$911

Over a year, the money you saved on pump fuel can be used for whatever you choose.

Range Difference

TDI® - 729.6 miles/tanks



TFSI® - 693 miles/tanks



Diesel

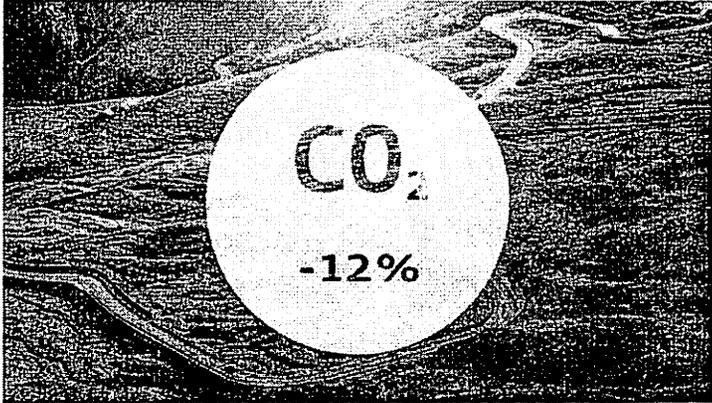
Power 240hp @ 3,500-3,750 rpm
Torque 428 lb-ft @ 1,750-2,250 rpm
Acceleration 0 to 60 in 5.5 sec.
Miles per gallon 25 City / 38 Highway / 30 Combined

Gasoline

Power 252hp @ 5,000-6,000 rpm
Torque 273 lb-ft @ 1,600-4,500 rpm
Acceleration 0 to 60 in 6.7 sec.
Miles per gallon 24 City / 35 Highway / 28 Combined

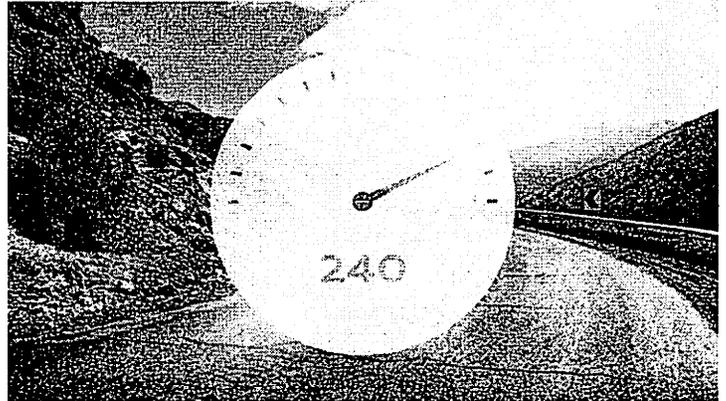
The future can look brighter

Audi TDI® - Clean Diesel Technology | Audi USA



A cleaner future
Is beginning now.

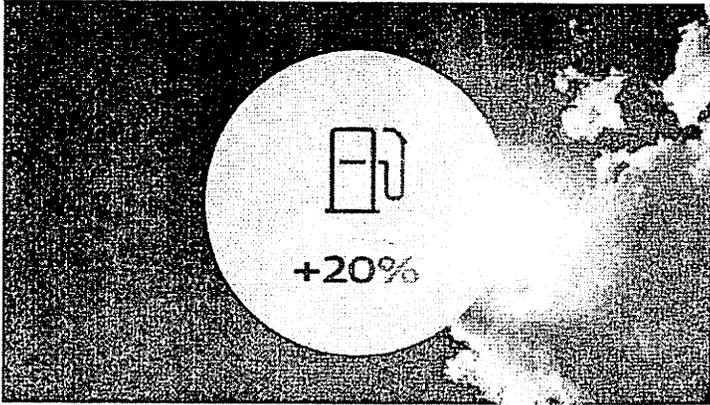
With the TDI® clean diesel, Audi is pioneering the way for the vehicles and fuels of tomorrow. 12% lower CO₂ emissions than gasoline, TDI® is kind to the planet and has superior fuel efficiency combined with more torque and quick acceleration. An unbeatable combination.*



Intelligent performance
Efficiency shouldn't feel this powerful.

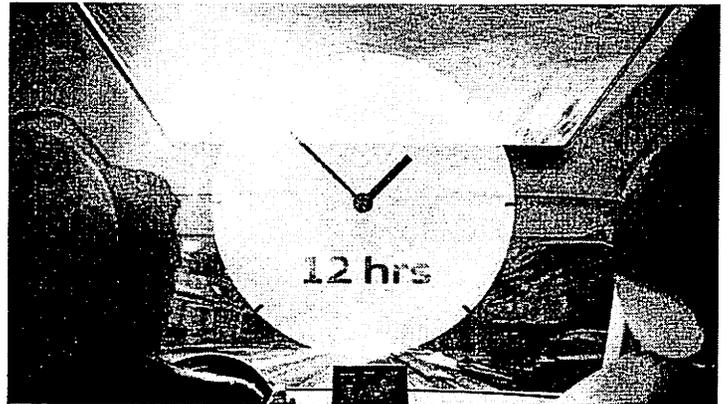
Audi TDI® clean diesel technology is packed with low-end torque, giving you incredible acceleration and passing power. So even though you feel the power kick in at higher speeds, the ingenious TDI® engine helps reduce fuel consumption.

Audi TDI® - Clean Diesel Technology | Audi USA



There's more to a drop
Fuel density is fuel destiny.

With astonishing benefits, TDI® exploits fuel, ensuring you get more from each drop. Each contains 15% more energy than gasoline, translating to 30% better fuel economy and 20% fewer trips to the pump. That's time you get back to experience all of life's little luxuries.



Take back the horizon

Audi TDI® - Clean Diesel Technology | Audi USA

Easy, with more than 650 miles per tank.

With more than 650 miles per tank, Audi TDI® clean diesel takes you farther than ever before. Drive from New York to Chicago or Dallas to Atlanta, it's all possible on one tank. Going farther has never been more elegant. So you can enjoy driving for 12 hours—on one tank.



2014 TDI® model lineup

With everything TDI® clean diesel has to offer, it's no wonder it's the intelligent choice. It starts with incredible performance, efficiency and a range second to none. It also turns out it could make the world a cleaner place—by cutting emissions by 12%.

[View TDI® model gallery](#)

Audi TDI® - Clean Diesel Technology | Audi USA



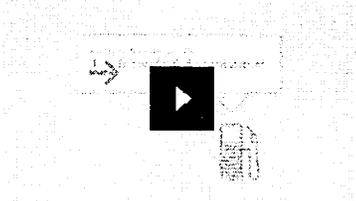
Clean Diesel

Clean diesel technology explained

Understand how clean diesel technology impacts fuel efficiency and performance, while being a more eco-conscious choice.

➤ [Explore clearly better diesel](#)

Videos



It's time to rethink diesel

Undeniable truths of TDI® clean diesel dispel common misperceptions.

➤ [View video](#)



Audi challenges the status quo

The norm is never acceptable. It is an opportunity to progress.

➤ [View video](#)



Taking you farther—on less

From Chicago to New York. On one tank.

➤ [View video](#)

Audi TDI® - Clean Diesel Technology | Audi USA



Audi TDI®—looking forward

The most important thing powered by Audi TDI® clean diesel is the future.

[View video](#)

Models of note



A6 TDI®

Starting at \$59,500

[Explore >>](#)



Q5 TDI®

Starting at \$48,100

[Explore >>](#)

Audi TDI® - Clean Diesel Technology | Audi USA



A8 L TDI®
Starting at \$85,100

Explore >>

More Audi innovation

Explore more truth in engineering.

- > Motorsport
- > Audi TFSI®

- > Audi e-tron®
- > LED technology

* City all speed and traffic laws. 2.24 city/31 highway/27 combined mpg (2014 Q5 TDI® clean diesel with eight-speed Tiptronic® automatic transmission and Audi quattro® all-wheel drive). EPA estimates. Your mileage will vary.

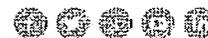
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Audi TDI® - Clean Diesel Technology | Audi USA

➤ Audi brochures

➤ Newsroom



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EXHIBIT 6

INTERNET ARCHIVE
waybackmachine

49 captures
29 Apr 14 - 23 Sep 15

DEC MAR AUG Close
30
2014 2015 2014 Help

View key fuel efficiency and comparison info

TDI[®] Clean Diesel



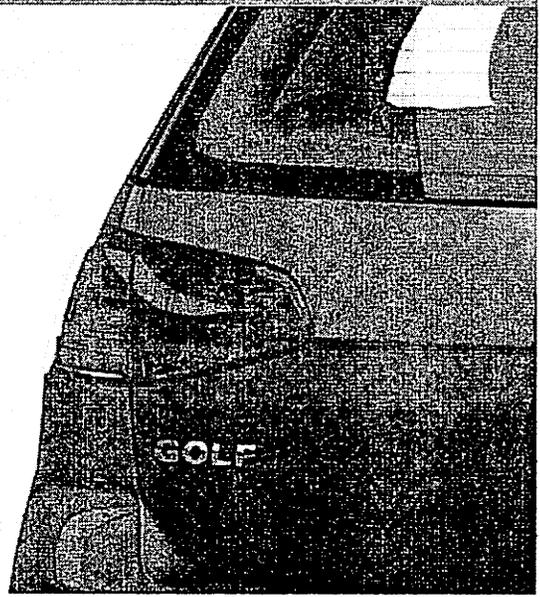
A whole family of front-runners

Long range without sacrifice is the promise of TDI Clean Diesel. And Volkswagen has sold more diesel cars in the U.S. than every other brand combined. Promise kept.

[VIEW INVENTORY](#)

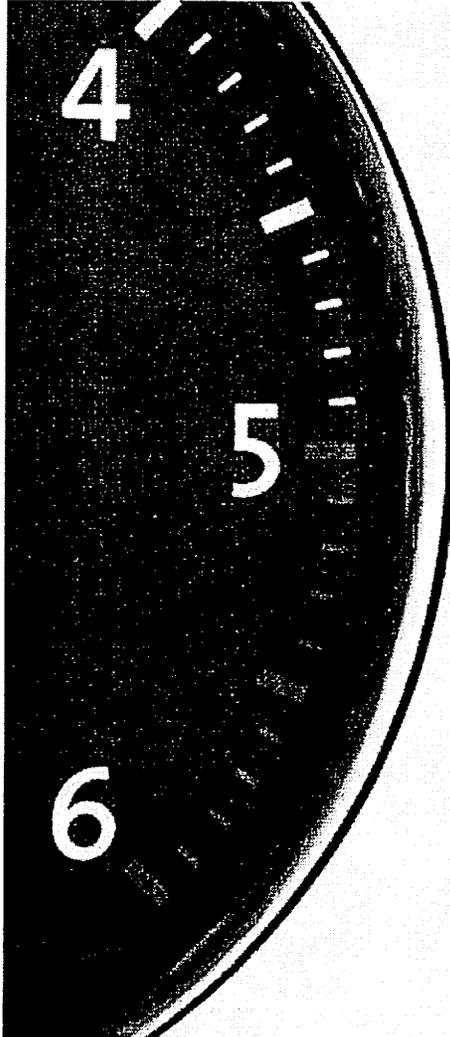
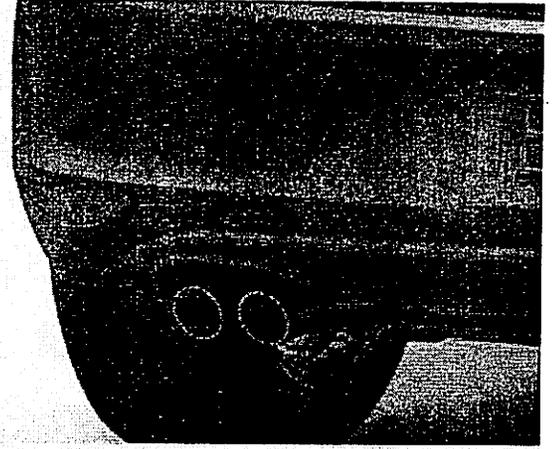
Efficiency. Now available without compromise.

Hybrids aren't the only game in town. TDI[®] Clean Diesel engines offer up impressive efficiency numbers too. Take the Passat TDI for starters. It can go up to 814 miles uninterrupted. Now that's a game changer.



- Seven efficient models to choose from
- Efficiency from up to 29 to 46 hwy mpg
- Ranges from up to 594 to 814 hwy miles on a single tank of fuel

[View key fuel efficiency and range info](#)



Fun-fueled.

Feel the fun, torque-y, turbocharged power of a TDI Clean Diesel engine and you'll almost forget it's efficient. TDI Clean Diesel makes sure you don't have to sacrifice driving dynamics for mpg. Cake. Eating it too.

- Available DSG® dual-clutch transmission
- Torque-y and responsive

[View key fuel efficiency info](#)

This ain't your daddy's diesel.

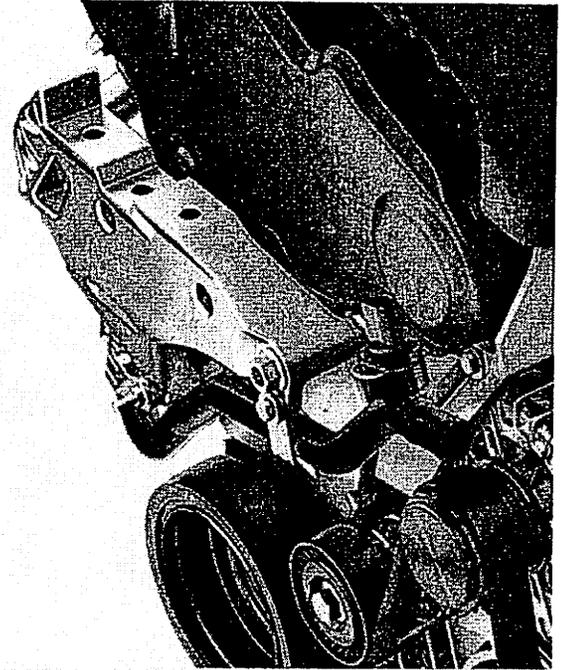
Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean



Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. 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](#) ?



Efficiency isn't just a word. It's our philosophy.

Our commitment to making vehicles that are eco-conscious is part of bigger thinking. Because by building efficient vehicles that people actually want to drive, we're also building a better future for all of us. It's how we Think Blue®.

[View key fuel efficiency info](#) ?



The Volkswagen TDI Family

GOLF JETTA PASSAT BEETLE TOUAREG

Don't ask how far. Ask how fun.

Stylish and spacious, the Golf TDI Clean Diesel also manages to pack a lot of driving fun into an incredibly efficient engine. We're talking up to 594 highway miles on one tank efficiency. Let the good times roll.

MEET THE GOLF

[View key fuel efficiency info](#)

Get a load of what's coming soon.

With an incredible range of up to 567 highway miles on one tank of fuel, a 2.0L turbocharged engine, and 66.5 cu. ft. of cargo space with the rear seats folded flat, the all-new Golf SportWagen TDI Clean Diesel will be ready for you, your gear, and your next adventure.

[View key range info](#) ⁷

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EXHIBIT 8

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2015 OCT -2 PM 3: 55

EDITH S. BARNES, CLERK
KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, ATTORNEY GENERAL,

Plaintiff,

v.

Civil Action No. 15-C-1833

Judge King

VOLKSWAGEN of AMERICA, INC., a New Jersey
corporation,

Defendant.

COMPLAINT FOR CONSUMER RESTITUTION,
CIVIL PENALTIES,
AND OTHER APPROPRIATE RELIEF

Plaintiff, the State of West Virginia ex rel. Patrick Morrissey, Attorney General ("the State" or "Attorney General"), files this Complaint asking the Court to permanently enjoin the above-named Defendant, Volkswagen Group of America, Inc. ("Volkswagen") from violating the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101 *et seq.*, and other applicable consumer protection laws and regulations, and to enter a final order awarding the State all other appropriate relief as authorized by W. Va. Code § 46A-7-108.

I. PARTIES

1. The State, by and through the Attorney General, Patrick Morrisey, is authorized to bring this action pursuant to the Consumer Credit and Protection Act, W. Va. Code § 46A-1-101, et seq. (the "WVCCPA").

2. Defendant, Volkswagen Group of America, Inc., is a New Jersey corporation, and at all relevant times was doing business in the State of West Virginia by selling and distributing motor vehicles through a chain of distribution and dealers within West Virginia.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

4. Venue is proper in this court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a)(6).

III. BACKGROUND AND APPLICABLE LAW

5. Defendant Volkswagen is a wholly owned subsidiary of Volkswagen A.G., and is responsible for the U.S. operations of Volkswagen A.G.'s brands Volkswagen, Audi, Bentley, Bugatti, Lamborghini, and VW Credit, Inc.

6. Volkswagen is in the business of distributing, selling, and financing motor vehicles within the State of West Virginia.

7. The United States Government, through the Environmental Protection Agency ("EPA"), has passed and enforced laws designed to protect United States citizens from pollution and other significant risks to human health and the environment. Automobile manufacturers must abide by these U.S. laws and must adhere to EPA rules and regulations.

8. The Clean Air Act (“CAA”) is a comprehensive federal law that regulates different types of air emissions.

9. The CAA was passed to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1)-(2).

10. The CAA requires, among other things, that vehicles sold in the United States be covered by an EPA issued certificate of conformity, which certifies that the vehicles meet applicable emissions standards for air pollution.

11. In 2008, Volkswagen introduced a new line of “clean diesel” vehicles with Turbo-charged Direct Injection (“TDI”) engines.

12. Volkswagen advertised the TDI clean diesel vehicles as being environmentally friendly, claiming them to be the “most clean diesel vehicles in the U.S.”

13. In May of 2014, the Center for Alternative Fuels, Engines & Emissions (“CAFEE”) at West Virginia University released a study on the in-use emissions of light duty diesel vehicles in the United States. The study conducted by CAFEE produced evidence that Volkswagen was cheating U.S. emissions testing on at least two Volkswagen TDI clean diesel vehicles. CAFEE’s results were later corroborated by the California Air Resources Board and the U.S. Environmental Protection Agency.

14. On September 18, 2015, based at least in part upon a study performed at West Virginia University, the EPA issued a Notice of Violation (“NOV”) to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc., for failure to comply with the Clean Air Act regulations in 482,000 diesel vehicles sold in the United States since 2008.

15. As suggested by the CAFEE study, and as outlined in the EPA NOV, Volkswagen purposely engineered certain Volkswagen and Audi diesel vehicles to cheat U.S. emissions tests by equipping them with software that detects when the vehicles are undergoing emissions testing. The software used by Volkswagen allows emissions controls to operate normally when a vehicle is undergoing emissions testing, but suppresses emissions controls to increase performance and fuel economy when vehicles are operating normally. By suppressing the emissions controls during normal operation, the software allows Volkswagen and Audi TDI clean diesel vehicles to emit up to 40 times the allowable levels of certain pollutants, including nitrogen oxides (“NO_x”).

16. The CAA defines this type of software as a “defeat device.”

17. It is a violation of the CAA to manufacture, sell, or install a defeat device in order to bypass or render inoperative any emission control device.

18. Vehicles equipped with defeat devices will not be issued a certificate of conformity by the EPA, and cannot, therefore, be sold in the United States.

19. According to the EPA NOV, Volkswagen installed its “defeat device” in at least the following diesel models (the “Affected Vehicles”): 2009-2015 VW Jetta; 2009-2015 VW Beetle; 2009-2015 VW Golf; 2012-2015 VW Passat; and 2009-2015 Audi A3. Discovery may reveal that additional vehicle models and model years are properly included as Affected Vehicles.

20. Volkswagen’s former CEO, Martin Winterkorn, publicly admitted Volkswagen installed the defeat devices in its diesel vehicles in order to bypass or render inoperative any emission control device. Winterkorn resigned shortly after disclosing this conduct by Volkswagen.

21. Beginning in 2008, in order to entice consumers to purchase their TDI clean diesel vehicles, Volkswagen advertised the TDI line of vehicles as environmentally friendly, fuel efficient, and high performance. In fact, Volkswagen marketed the TDI clean diesel vehicles as the "most clean diesel vehicles in the U.S.," and advertised that the engines were EPA certified in all 50 states.

22. West Virginia consumers responded to Volkswagen's advertising by purchasing TDI clean diesel models, expecting that their vehicles would be environmentally friendly, fuel efficient, and high performance, as advertised.

23. The TDI clean diesel vehicles were sold at a premium above the cost of standard gasoline engines. Depending on the make and options chosen by consumers, the premium was between \$1,000 and \$6,855.

24. However, those West Virginia consumers who purchased Volkswagen and Audi TDI clean diesel vehicles did not receive vehicles that would perform as represented to them by Volkswagen. Specifically, the TDI clean diesel vehicles are not environmentally friendly, and gain performance, fuel efficiency, and EPA certification only by circumventing required environmental controls.

25. The EPA has ordered Volkswagen to recall the Affected Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation.

26. Volkswagen will not be able to comply with the EPA order to make the Affected Vehicles comply with emissions standards without substantially degrading their performance and fuel efficiency to a level below that advertised by Volkswagen, and below that experienced by consumers prior to, or when they purchased their vehicles.

27. Should the Affected Vehicles be repaired to make them comply with EPA emissions requirements, the reduced performance and fuel efficiency, together with a stigmatization of the vehicles, will cause a diminution in the value of every Affected Vehicle.

28. According to the West Virginia Division of Motor Vehicles ("DMV"), there are currently 2,684 diesel Volkswagen vehicles from model years 2009 to 2015 currently registered in this state. It is likely that discovery will reveal that the number of Affected Vehicles sold to West Virginia consumers is greater than the number currently registered with the DMV.

29. At all times pertinent to the case at bar, Volkswagen engaged in the sale and financing of motor vehicles to West Virginia Consumers. Therefore, Volkswagen's business practices are subject to the provisions set forth in the WVCCPA, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101.

30. The WVCCPA prohibits, *inter alia*, a merchant of goods from engaging in unfair methods of competition and unfair or deceptive acts or practices in its advertising to and transactions with a consumer. *See W. Va. Code § 46A-6-104.*

31. Volkswagen engaged in unfair methods of competition and unfair or deceptive acts or practices in violation of the WVCCPA, generally, and W. Va. Code § 46A-6-104, specifically.

FIRST CAUSE OF ACTION
(Certifications, Benefits and Characteristics Not as Promised
W.Va. Code § 46A-6-102(7) (B), (C), (E) and (G))

32. The State reasserts each and every allegation in Paragraphs 1 through 31 of the Complaint as if set forth fully herein.

33. Vehicles sold in the United States are required to have a certificate of conformity from the EPA.

34. Vehicles equipped with defeat devices will not be issued a certificate of conformity by the EPA, and cannot, therefore, be sold in the United States.

35. Nonetheless, Volkswagen equipped the affected TDI clean diesel vehicles with defeat devices in order to cheat the environmental standards required by the EPA and trick the EPA into issuing the required EPA certification.

36. By equipping its vehicles with defeat devices Volkswagen was able to artificially inflate the fuel efficiency, performance, and emissions data above a level possible if the vehicles were operating with the appropriate environmental controls.

37. Volkswagen then marketed the TDI clean diesel line of vehicles as EPA certified in all 50 states.

38. Further, Volkswagen marketed the TDI clean diesel line of vehicles as environmentally friendly, fuel efficient, and high performance when in fact, Volkswagen intentionally and deliberately placed defeat devices on the vehicles to allow the vehicles to pass emissions tests while producing illegal levels of pollutants during normal operation.

39. Volkswagen's claimed fuel efficiency and performance for the TDI clean diesel line of vehicles was misleading because it was only obtainable on vehicles operating with environmental controls intentionally and illegally turned off.

40. Volkswagen engaged in unfair or deceptive acts or practices in violation of the WVCCPA by representing that the TDI clean diesel line of vehicles were environmentally friendly, fuel efficient and high performance, when in fact, the vehicles did not have those

characteristics, benefits or qualities. W.Va. Code § 46A-6-104 as defined by W.Va. Code § 46A-6-102(7)(B), (C), (E) and (G).

SECOND CAUSE OF ACTION
(Advertised Services Not Delivered, W.Va. Code § 46A-6-104)

41. The State reasserts each and every allegation in Paragraphs 1 through 40 of the Complaint as if set forth fully herein.

42. Volkswagen advertised that it manufactures and sells environmentally friendly, clean, turbocharged diesel-powered motor vehicles to consumers in West Virginia.

43. Volkswagen advertised that its TDI clean diesel line of vehicles delivered 30 percent better fuel mileage, “significantly more torque” and were “more fun” to drive.

44. Volkswagen also advertised that its “clean” diesel engine had “cleaned up its act” and urged consumers to “find out how clean diesel technology impacts fuel efficiency and performance, while also being a more eco-conscious choice.”

45. Volkswagen’s advertisements misrepresented to consumers that the Affected Vehicles would be “eco-conscious,” and “clean” while delivering the fuel mileage and performance advertised. This advertising is unfair or deceptive as defined by the WVCCPA because the Affected Vehicles are not clean or eco-conscious since they violate federal pollution laws. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A 6 102(7)(I) and (N).

46. Volkswagen’s advertising is unfair and deceptive, since it misrepresents the true fuel mileage and performance of the Affected Vehicles once the defeat devices are removed or disabled. Volkswagen failed to disclose the true fuel mileage and other performance characteristics of its TDI diesel line of vehicles. Volkswagen never intended to

sell the Affected Vehicles as advertised in violation of the WVCCPA. W.Va. Code § 46A-6-104 as defined by W.Va. Code § 46A-6-102(7)(I) and (N).

THIRD CAUSE OF ACTION
(Volkswagen Cause Confusion and Misunderstanding
Through its Misrepresentations and Omissions,
W.Va. Code § 46A-6-102(7) (L) and (M))

47. The State reasserts each and every allegation in Paragraphs 1 through 46 of the Complaint as if set forth fully herein.

48. Consumers were confused and misled by Volkswagen's advertising.

49. When consumers saw advertising for Volkswagen's TDI diesel line of vehicles, they properly expected to purchase Affected Vehicles that were environmentally friendly and eco-conscious while delivering the performance and fuel economy advertised.

50. Consumers never expected to purchase an Affected Vehicle that was environmentally unfriendly, and that polluted the atmosphere in violation of federal laws. Volkswagen's unfair and deceptive conduct caused confusion and misunderstanding in violation of the WVCCPA. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L).

51. Volkswagen failed to disclose that its TDI line of vehicles were not in compliance with and violated federal laws until it was caught by regulators. Volkswagen intended for consumers to rely on its omissions so that it could sell its unlawfully polluting TDI line of vehicles in violation of the WVCCPA. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(M).

FOURTH CAUSE OF ACTION
(Excess Fees Violations, W. Va. Code §§ 46A-7-111)

52. The State reasserts each and every allegation in Paragraphs 1 through 51 of the Complaint as if set forth fully herein.

53. Volkswagen charged and collected excess money from West Virginia consumers for Affected Vehicles that cannot meet the advertised specifications without violating federal law.

54. Volkswagen engaged in unfair or deceptive acts or practices by charging and collecting more money than justified for its TDI line of vehicles due to its deceptive and misleading advertising in violation of W. Va. Code § 46A-7-111 and W. Va. Code § 46A-6-104. As such, Volkswagen is subject to civil penalties up to ten times the excess charge as permitted by W.Va. Code § 46A-7-111(1).

PRAYER FOR RELIEF

WHEREFORE, The State of West Virginia requests that this Court:

1. Enter an Order permanently enjoining and restraining Volkswagen from engaging in unfair or deceptive acts or practices in violation of W. Va. Code §§ 46A-6-101 and 104 in general and, specifically, from engaging in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-102(7), (B), (C), (E), (G), (I), (L) and (M);

2. Enter an Order permanently enjoining and restraining Volkswagen from continuing to use unfair or deceptive terms in its advertising of TDI line of vehicles in violation of W. Va. Code §§ 46A-6-104;

3. Enter an Order compelling Volkswagen to prominently disclose in its advertising the true performance specifications of its TDI line of vehicles when they are in compliance with federal laws;

4. Enter judgment against Volkswagen and in favor of the State, ordering it to pay appropriate restitution to West Virginia consumers for all money paid to Volkswagen for Affected Vehicles, including, but not limited to, full refunds of the premium West Virginia consumers paid for their TDI clean diesel vehicles above comparable gasoline engine models, for the diminution in value of the Affected Vehicles suffered by West Virginia consumers, and for increased fuel and maintenance costs reasonably expected to be incurred by West Virginia consumers as a result of the decrease in performance following any repair of these issues by Volkswagen;

5 Enter judgment against Volkswagen and order it to refund all excess charges that it collected from West Virginia consumers and for civil penalties in an amount of ten times the excess charges collected from West Virginia consumers pursuant to W. Va. Code § 46A-7-111;

6. Enter judgment against and order Volkswagen to pay to the State of West Virginia all its attorneys' fees, court costs, investigation costs, and all other costs associated with the investigation and maintenance and prosecution of this action;

7. Enter judgment against and order Volkswagen to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for each and every willful and repeated violation of chapter 46A of the West Virginia Code that it committed, as provided in W. Va. Code § 46A 7-111(2);

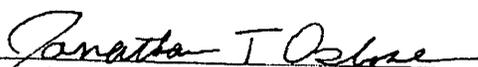
8. Enter an Order granting the State and its citizens all equitable relief available, including, but not limited to, restitution and disgorgement; and,

9. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
Attorney General

By Counsel



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EXHIBIT 9

- c.) VW's knowledge of the ability of its onboard software to detect or react to emissions test conditions;
- d.) The design and function of the alleged defeat device (software to detect and react to emissions test conditions);
- e.) The identity of witnesses, whether employed by VW or not, involved in the design or testing of VW's onboard computer software;
- f.) Any emissions testing for any diesel-powered VW and Audi vehicle for model years 2009-2015.
- g.) The reason for disabling or reducing VW's emissions controls on any diesel vehicles;
- h.) The monetary cost or loss of sales associated with the marketing of the subject vehicles without a defeat device;
- i.) The issues or problems with the use, or use at emissions test levels, of VW's emissions controls/NOx capture/catalytic reduction technologies;
- j.) The effect of VW's emissions controls/NOx capture/catalytic reduction technologies on vehicle performance, acceleration, customer satisfaction, sales, or increased maintenance;
- k.) Communications in whatever form with any person or entity involved in the design of the subject onboard computer software or its defeat device;
- l.) Communications in whatever form with any person, entity, agency, or institution attempting to test or verify the performance of VW's emissions control/NOx capture/ catalytic reduction technologies;
- m.) Communications in whatever form with the federal or any state government, person, entity, or institution investigating the possible or alleged use of a defeat device by VW on diesel powered vehicles;

- n.) Evidence pertaining to the decision to recall or halt sales of any diesel-powered VW vehicles that have been alleged to contain a defeat device;
- o.) Evidence of the financial cost to consumers or purchasers of the affected vehicles;
- p.) Evidence of the additional pollution caused by the affected vehicles or alleged defeat device(s);
- q.) Evidence of the health costs or any premature deaths in connection with the affected vehicles or alleged defeat device(s); and
- r.) Any and all electronically-stored information, data, or tangible things, in their native format, including but not limited, to those items mentioned in the preceding list.

4. Because much of the evidence in this case is electronically-stored communications and data, special steps will have to be taken to preserve the evidence. Electronic documents and the storage media on which they reside may contain additional, relevant and discoverable information, beyond a printed copy.

5. Therefore, this Court ORDERS Defendant Volkswagen Group of America, Inc., to take such additional steps as are necessary to preserve the meta-data, drafts, change histories, file fragments, attachments, and other potentially relevant information or data, in its native format, for the above described categories of documents which exist in electronic form.

6. This Court further ORDERS Defendant Volkswagen Group of America, Inc., to continue its voluntary suspension of the sales of the following 2015 and 2016 models of the affected vehicles, within the State of Texas, until further notice. This Order applies to the 2015 and 2016 diesel powered models of Volkswagen's Beetle, Beetle Convertible, Golf, Golf Sportswagen, Jetta, Passat, and Audi A3. If Defendant Volkswagen Group of America, Inc., wishes to resume sales to continue its voluntary suspension of the sales of the 2015 and 2016 models of the

affected vehicles, it must provide prompt notice to the Court, so that a hearing may be had prior to resuming sales of these affected models.

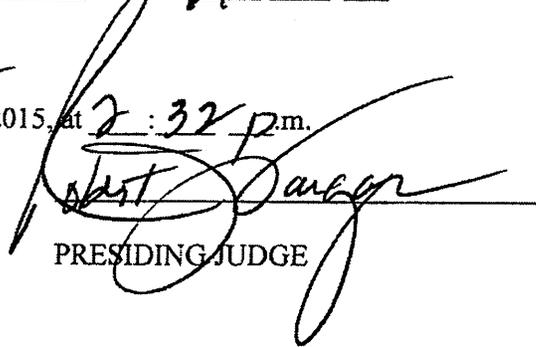
7. The Court further ORDERS the Clerk of the Court to issue a Writ of Injunction pending final hearing and determination of this case, enjoining and restraining Defendant Volkswagen Group of America, Inc. or any of its officers, agents, servants, employees, attorneys, representatives, or any person in active concert or participation with it who receives actual notice of this Order by personal service or otherwise from failing to take such additional steps as are necessary to preserve the meta-data, drafts, change histories, file fragments, attachments, and other potentially relevant information or data, in its native format, for the above described categories of documents which exist in electronic form, and from failing to continue its voluntary suspension of the sales of the following 2015 and 2016 models of the affected vehicles, within the State of Texas, until further notice. This Order applies to the 2015 and 2016 diesel powered models of Volkswagen's Beetle, Beetle Convertible, Golf, Golf Sportswagen, Jetta, Passat, and Audi A3.

8. The Court further ORDERS the Clerk of the Court to issue notice to Defendant Volkswagen Group of America, Inc., that the hearing on Plaintiff's Application for Temporary Injunction is set for October 12, 2015, at 9 : 00 a.m. The purpose of the hearing shall be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.

9. Bond is hereby set at \$ 1500

This Order expires on October 12, 2015, at 10 : 00 a.m.

SIGNED on September 25, 2015, at 2 : 32 p.m.


PRESIDING JUDGE