

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

SARAH BOWLIN, on behalf of herself and all others similarly situated, } Case No.: 1:15-cv-01328  
Plaintiff, } LOG / MSN  
vs. }  
VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN AG, } CLASS ACTION COMPLAINT  
Defendants. } DEMAND FOR JURY TRIAL

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Plaintiff Sarah Bowlin, ("Plaintiff") individually and on behalf of all others similarly situated (the "Class") alleges as follows:

**I. INTRODUCTION**

1. On September 18, 2015, following a lengthy investigation, the United States Environmental Protection Agency ("EPA") and the California Air Resources Board ("CARB") issued notices of violation ("NOV") against Volkswagen Group of America, Inc., ("Volkswagen of America") and Volkswagen AG, (collectively "Volkswagen") finding that almost 500,000 vehicles equipped with the 2.0 liter TDI Clean Diesel engine manufactured both by Audi and Volkswagen failed to meet federal and California state emissions requirements. Volkswagen markets, advertises, distributes and sells vehicles under the Audi and Volkswagen brand names throughout the United States. As a consequence of the investigation carried out by the EPA and CARB, Volkswagen admitted that these diesel cars have been certified for sale under both federal and California state emissions requirements only because they had been equipped with emissions control devices that "circumvent[] EPA emissions standards for certain air pollutants

also referred to as a 'defeat device'. This defeat device had been included in several Audi and Volkswagen models sold in the 2009 through 2015 model years and equipped with the 2.0 liter TDI Clean Diesel engine:

- Volkswagen Jetta, Jetta Sportswagen (2009-2015)
- Volkswagen Beetle, Beetle Convertible (2009-2015)
- Audi A3 (2009-2015)
- Volkswagen Golf (2009-2015)
- Volkswagen Passat (2014-2015)
- Volkswagen Golf Sportswagen (2015)

(Hereinafter collectively referred to as the "2.0 liter TDI Clean Diesel engine vehicles" or "Clean Diesel Vehicles"). Within days, Volkswagen was forced to acknowledge that the defeat devices had been installed on as many as eleven million 2.0 liter TDI Clean Diesel engines sold throughout the world.

2. A September 18, 2015 press release by the CARB described these defeat devices as:

a sophisticated software algorithm on certain Volkswagen vehicles [that] detects when the car is undergoing official emissions testing, and turns full emissions controls on only during the test. The effectiveness of these vehicles' pollution emissions control devices is greatly reduced during all normal driving situations. This results in cars that meet emissions standards in the laboratory or testing situation, but during normal operation, emit nitrogen oxides or (NOx), at up to 40 times the standard.

For years, and through multiple revisions of the engine, Volkswagen marketed the 2.0 liter TDI Clean Diesel engine vehicles as an alternative to traditional gas, electric and hybrid vehicles. Volkswagen did so by highlighting the fact that these Clean Diesel Vehicles had much better mileage than traditional gas vehicles while having much better performance than hybrid or electric vehicles. In fact, as discovered by CARB and the EPA, the 2.0 liter TDI Clean Diesel engine emitted nitrogen oxide at up to forty times the level allowed by applicable standards.

3. The emission of nitrogen oxides ("NOx") is tightly regulated in the United States because NOx emissions have a variety of negative environmental impacts. Most significantly,

by reacting with volatile organic compounds such as methane, NOx forms tropospheric ozone, which can damage lung tissue in children, the elderly and asthmatics. In addition, once in the atmosphere, NOx gases react forming smog and acid rain.

4. Based on representations made by Volkswagen, hundreds of thousands of consumers throughout the United States purchased vehicles that emit unsafe and illegal amounts of dangerous gaseous chemicals. These dangerous vehicles will be subject to a recall so that the onboard computers that monitor and control vehicle emissions can be replaced or updated to put the vehicles in compliance with federal and California state emissions requirements. Assuming that it is possible to make these vehicles compliant with emissions requirements, the changes made pursuant to a recall will negatively impact the performance and/or fuel economy of the vehicles. If it is not possible to modify these vehicles to bring them into compliance with emissions requirements, it is unclear whether it will be legal to operate them. In either instance, the residual value of these vehicles has been substantially and negatively impacted.

## **II. JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregate claims of the individual Class members exceed the sum or value of \$5,000,000, exclusive of interests and costs. More than two-thirds of the proposed plaintiff class are citizens of states other than the Defendants'. This Court also has jurisdiction to decide claims brought under 15 U.S.C. § 2301 (the Magnuson- Moss Warranty Act) by virtue of 28 U.S.C. § 1332(a)-(d) and 28 U.S.C. § 1331.

6. This Court has jurisdiction over Volkswagen because Volkswagen conducts business in Herndon, Virginia and the district and has minimum contacts in the district or otherwise intentionally avails itself of the markets within the district through its promotion, sale,

marketing, and distribution of its vehicles sufficient to render the exercise of jurisdiction by this Court proper and necessary. Volkswagen of America also maintains its headquarters in Herndon, Virginia.

7. Venue is proper in this District under 28 U.S.C. § 1331(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District. Volkswagen also advertises, markets, sells and leases Clean Diesel Vehicles in this District. Volkswagen of America is headquartered in this district. In addition, at least one action arising from the same operative facts set forth herein is pending in this District.

### **III. PARTIES**

8. Plaintiff Sarah Bowlin purchased a 2011 Volkswagen Jetta equipped with a 2.0 liter Clean Diesel engine on September 2, 2011 from Mossy Volkswagen, 1695 Auto Park Way, Escondido, California. Plaintiff still owns this vehicle. At the time Plaintiff purchased this vehicle, Plaintiff was unaware that the vehicle was equipped with a defeat device that evaded applicable emissions requirements. Plaintiff purchased this vehicle based on representations made by Volkswagen regarding its performance, gas mileage, compliance with applicable regulations and fitness for use as a personal vehicle. As a result of Volkswagen's actions and false statements, Plaintiff has suffered an ascertainable loss caused by, *inter alia*, out-of-pocket losses, future additional fuel costs, diminished performance of the vehicle and diminished residual and/or resale value of the vehicle.

9. Defendant Volkswagen Group of America, Inc. is a New Jersey corporation headquartered at 2200 Ferdinand Porsche Drive, Herndon, Virginia. Volkswagen of America manufactures, distributes, markets and sells vehicles under both the Audi and Volkswagen brand names throughout the United States and its territories.

10. Volkswagen AG is the parent company of Volkswagen of America. Volkswagen AG's principal place of business and headquarters is in Wolfsburg, Germany. Through, *inter alia*, Volkswagen of America and affiliated dealers throughout the country, Volkswagen AG conducts substantial business in the United States

#### **IV. FACTS**

##### **A. The EPA and CARB Discover Volkswagen's Deceptive Conduct**

11. On Friday, September 18, 2015, the EPA and CARB each issued notices of violation to Volkswagen. Both NOVs contained a shocking finding – that Volkswagen had, for years, included a defeat device in its 2.0 liter TDI Clean Diesel engines. This defeat device was designed specifically to mask the inability of the 2.0 liter TDI Clean Diesel engine to comply with applicable federal and state emissions standards and requirements. As a result of this defeat device, nearly 500,000 Volkswagen and Audi vehicles were certified as being compliant with applicable regulations when, in some cases, the engines emitted forty times the allowable levels of certain pollutants.

12. In its very first paragraph, the EPA NOV, attached hereto as "Exhibit A," concluded that "*[t]hese defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with [Clean Air Act] emission standards.*" Therefore, VW violated section 203(a)(3)(B) of the [Clean Air Act], 42 U.S.C. § 7522(a)(3)(B)."

13. The CARB NOV, attached hereto as "Exhibit B," which noted Volkswagen's "admission of [use of a] defeat device," stated that "[i]n 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." The CARB NOV then went on to summarize the lengthy investigative efforts undertaken by the agency.

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 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*<sup>1</sup>

VW initiated testing to replicate the ICCTIWVU 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.

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<sup>1</sup> Emphasis added throughout except where otherwise noted.

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 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.

14. The EPA and CARB NOVs disclosed the lengthy efforts undertaken by both agencies leading up to Volkswagens' belated admission that, over the course of several years, it had gamed emissions standards in order to allow it to put vehicles on the road that spew dangerous and illegal pollutants. Both the EPA and CARB NOVs indicated that their investigations of Volkswagen were continuing and that the matter might be referred for further

criminal investigation and prosecution. Moreover, based on Volkswagen's admission that the subject vehicles contained defeat devices, the potential fines faced by Volkswagen in the United States alone could be in excess of \$18 billion. Separate and apart from the potential fines and potential criminal action, both the EPA and CARB NOVs demanded that Volkswagen take immediate steps to address vehicles sold with the illegal defeat device and remedy their inherent and purposeful defects.

**B. Concerns over Pollution and Adverse Health Impacts Result in Strict Federal and State Regulation**

15. The EPA NOV provides a detailed summary of the history, purpose and application of federal regulation of vehicle emissions pursuant to the Clean Air Act and the EPA's treatment of defeat devices.

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 (NOx) 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.

\* \* \*

Light-duty vehicles must satisfy emission standards for certain air pollutants, including NOx. 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. § 86.1843-0 I. 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)(II). 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).

\* \* \*

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)(I). 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).

16. In addition to the Federal Clean Air Act, the State of California maintains its own air quality standards, implemented through regulations that applied to all cars marketed and sold within the state in order to combat motor vehicle pollution in highly populated regions such as Los Angeles. The standards in effect in California, overseen by CARB are generally referred to as "CARB standards." Many other states, including Arizona, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington have chosen to enact the more rigorous CARB standards over EPA

standards. As a result, the majority of cars sold in the United States are designed and manufactured to be compliant with CARB standards.

17. As part of efforts to curb greenhouse gases, reduce pollution and address the negative health impacts caused by pollution, CARB has adopted a series of standards for vehicle emissions, including standards for diesel engines used in passenger cars. In 2002, CARB adopted regulations implementing "Strategies to Control Emissions from Diesel Engines." Pursuant to these regulations, diesel engines certified for road use must employ emissions controls that substantially reduce NOx emissions. 13 CCR § 2700 *et seq.*

18. CARB regulation of diesel emissions is rooted in lengthy research into the negative impact of diesel exhaust on the health of Californians and environmental quality.

Diesel engines emit a complex mixture of air pollutants, composed of gaseous and solid material. The visible emissions in diesel exhaust are known as particulate matter or PM. *In 1998, California identified diesel exhaust particulate matter (PM) as a toxic air contaminant based on its potential to cause cancer, premature death, and other health problems.* Diesel engines also contribute to California's fine particulate matter (PM2.5) air quality problems. Those most vulnerable are children whose lungs are still developing and the elderly who may have other serious health problems. *Based on year 2006-2008 emissions in California, diesel PM contributes each year to approximately 2,000 premature deaths, with an uncertainty range of 1,500 to 2,400. In addition, diesel soot causes visibility reduction and is a potent global warmer.*<sup>2</sup>

#### **1. Overview of EPA Emissions Standards and Certification Process**

19. In 1990, the Clean Air Act was substantially amended, granting the EPA authority and responsibility for the oversight of vehicle emissions. Pursuant to the Clean Air Act, the EPA established two tiers of emissions standards. Tier 1 standards were adopted in 1991 and were phased in between 1994 through 1997 and included separate emissions standards, based on vehicle weight, for automobiles and "light trucks," a category which includes minivans,

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<sup>2</sup> California Environmental Protection Agency Air Resources Board, Diesel & Health Research, <http://www.arb.ca.gov/research/diesel/diesel-health.htm> (last visited October 8, 2015).

pickup trucks and SUVs. The Tier 1 standards were effective until 2003 and, in 2004, the EPA began phasing in Tier 2 standards.

20. The Tier 2 standards did away with the distinction between automobiles and light trucks, instead adopting a series of eleven separate rankings, referred to as "BINS." These rankings include eight permanent BINs and three temporary BINs.<sup>3</sup> Also in 2008, Tier 2 standards specific to cars equipped with diesel engines were adopted. The Tier 2 standard was substantially more rigorous, focusing on limiting soot, NOx and sulfur dioxide emissions. The restrictions were so rigorous that, in anticipation of the new standard, in 2007, Volkswagen pulled its four cylinder diesel models from its line up while it designed a new, Tier 2 compliant engine.

21. As indicated in the table below, each of these BINs establishes a variety of standards by which emissions performance is measured over the useful life of the vehicle. Included in the measurements are emissions of NOx, non-methane organic gas ("NMOG"), carbon monoxide ("CO"), particulate matter ("PM") and hydrocarbons and formaldehyde ("HCHO").

#### **Light-Duty Vehicle, Light-Duty Truck, and Medium-Duty Passenger Vehicle -- Tier 2 Exhaust Emission Standards**

|         | Standard | Emission Limits at 50,000 miles |                |              |              |                | Emission Limits at Full Useful Life<br>(120,000 miles) <sup>2</sup> |                |              |              |                |
|---------|----------|---------------------------------|----------------|--------------|--------------|----------------|---|----------------|--------------|--------------|----------------|
|         |          | NOx<br>(g/mi)                   | NMOG<br>(g/mi) | CO<br>(g/mi) | PM<br>(g/mi) | HCHO<br>(g/mi) | NOx<br>(g/mi)   | NMOG<br>(g/mi) | CO<br>(g/mi) | PM<br>(g/mi) | HCHO<br>(g/mi) |
| Federal | Bin 1    | -                               | -              | -            | -            | -              | 0   | 0              | 0            | 0            | 0              |
|         | Bin 2    | -                               | -              | -            | -            | -              | 0.02  | 0.01           | 2.1          | 0.01         | 0.004          |
|         | Bin 3    | -                               | -              | -            | -            | -              | 0.03  | 0.055          | 2.1          | 0.01         | 0.011          |
|         | Bin 4    | -                               | -              | -            | -            | -              | 0.04  | 0.07           | 2.1          | 0.01         | 0.011          |
|         | Bin 5    | 0.05                            | 0.075          | 3.4          | -            | 0.015          | 0.07  | 0.09           | 4.2          | 0.01         | 0.018          |
|         | Bin 6    | 0.08                            | 0.075          | 3.4          | -            | 0.015          | 0.1   | 0.09           | 4.2          | 0.01         | 0.018          |

<sup>3</sup> The three temporary BINs expired between 2006 and 2008.

|  |        |      |                    |     |   |       |      |       |     |      |       |
|--|--------|------|--------------------|-----|---|-------|------|-------|-----|------|-------|
|  | Bin 7  | 0.11 | 0.075              | 3.4 | - | 0.015 | 0.15 | 0.09  | 4.2 | 0.02 | 0.018 |
|  | Bin 8  | 0.14 | 0.100              | 3.4 | - | 0.015 | 0.2  | 0.125 | 4.2 | 0.02 | 0.018 |
|  |        |      | 0.125 <sup>c</sup> |     |   |       |      | 0.156 |     |      |       |
|  | Bin 9  | 0.2  | 0.075              | 3.4 | - | 0.015 | 0.3  | 0.090 | 4.2 | 0.06 | 0.018 |
|  |        |      | 0.140              |     |   |       |      | 0.180 |     |      |       |
|  | Bin 10 | 0.4  | 0.125              | 3.4 | - | 0.015 | 0.6  | 0.156 | 4.2 | 0.08 | 0.018 |
|  |        |      | 0.160              | 4.4 |   | 0.018 |      | 0.230 | 6.4 |      | 0.027 |
|  | Bin 11 | 0.6  | 0.195              | 5   | - | 0.022 | 0.9  | 0.28  | 7.3 | 0.12 | 0.032 |

United States Environmental Protection Agency, Emission Standards Reference Guide, United States Environmental Protection Agency, Emission Standards Reference Guide, <http://www3.epa.gov/otaq/standards/light-duty/tier2stds.htm> (last visited October 8, 2015).

22. While vehicle manufacturers can seek to have their cars qualified under any of the eight permanent BINs, the average emissions of their entire fleet must be consistent with the BIN 5 standards. Thus, for every car qualified under BINs 6-8, the manufacturer must manufacture and sell a number of cars qualified at standards below BIN 5 to meet fleet requirements. In addition, to encourage manufacturers to lower NOx emissions, the EPA allows automakers to "bank" NOx credits if its fleet generates less NOx than allowed under the standard in any given year. Once "banked" those NOx credits can be used for future model years or traded to other manufacturers whose fleets do not meet NOx emissions standards.

23. Volkswagen apparently sought to use its 2.0 Liter TDI Clean Diesel engines as a means of "banking" NOx credits. Even as it was building its defeat device into new vehicles, Volkswagen actively lobbied the EPA for special dispensations, including fuel economy credits similar to those granted by the EPA for zero-emission electric vehicles. As reported in the New York Times, according to Margo Oge, a former director of the EPA's Office of Transportation and Air Quality who led negotiations with Volkswagen, the Company "wanted a special deal for

diesel cars that we now know weren't even meeting the standard."<sup>4</sup> Mrs. Oge noted that one of the Volkswagen executives suspended in the wake of the disclosure of the defeat device, Wolfgang Hatz, was active in negotiations with the EPA and repeatedly stressed the value of its diesel emissions system over hybrids and electric vehicles. "He said the company simply did not believe in electric powertrains or hybrids." *Id.* Hatz, who had previously worked for Audi, became the director of engine and transmission development for all Volkswagen brands in 2007. In that role, Hatz was responsible for the development of the 2.0 Liter TDI Clean Diesel engine.

24. Pursuant to 40 CFR § 86.1809-10, titled "Prohibition of defeat devices," "[n]o new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device." The prohibition on defeat devices establishes, *inter alia*, that vehicle certification applications must include engineering evaluations demonstrating that subject vehicles do not contain defeat devices designed to result in a "discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde." In addition, certification applications for vehicles equipped with diesel engines must include similar engineering evaluations addressing particulate emissions. 40 CFR § 86.1809-10(e).

## **2. Overview of CARB Emissions Standards and Certification Process**

25. CARB maintains standards for passenger cars and light duty trucks which both incorporate the EPA standards set forth in 40 CFR § 86 and add over one hundred pages of additional requirements.<sup>5</sup>

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<sup>4</sup> Volkswagen Sought a Green Seal for its Diesel Cars, New York Times, October 6, 2015.

<sup>5</sup> See California Environmental Protection Agency Air Resources Board, California 2001 - 2014 Model Pollutant Exhaust Emission Standards and Test Procedures and 2009 - 2016 Model

26. As with the standards adopted and enforced by the EPA, CARB implemented multiple tiers of standards, the first phased in between the 2001 and 2003 model years and the second, referred to as "LEV II standards," phased in for the 2004 model year. Instead of the multiple "BINs" adopted by the EPA, Under the LEV II standard, CARB maintains standards for just three categories of gas or diesel powered light passenger vehicles, low-emission vehicle ("LEV"), ultra-low emission vehicle ("ULEV") and super-ultra-low emission vehicle ("SULEV"). In addition, there are alternate classifications for vehicles equipped with hybrid, natural gas or electric engines. As of 2004, the LEV standard is the minimum acceptable standard in the State of California, and a ULEV is certified as emitting approximately 50% less pollution than a LEV.

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Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (2012),  
[http://www.arb.ca.gov/msprog/levprog/cleandoc/ldtps\\_2001-2014\\_cp\\_or\\_2016\\_ghg\\_my\\_clean\\_complete\\_lev\\_iii\\_12-12.pdf](http://www.arb.ca.gov/msprog/levprog/cleandoc/ldtps_2001-2014_cp_or_2016_ghg_my_clean_complete_lev_iii_12-12.pdf) (last visited October 8, 2015)

| <b>LEV II Exhaust Mass Emission Standards for New 2004 through 2014<br/>Model LEVs, ULEVs, and SULEVs<br/>in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes</b> |                                     |                                 |                |                              |                                 |                         |                        |
|--|-------------------------------------|---------------------------------|----------------|------------------------------|---------------------------------|-------------------------|------------------------|
| Vehicle Type   | Durability<br>Vehicle<br>Basis (mi) | Vehicle<br>Emission<br>Category | NMOG<br>(g/mi) | Carbon<br>Monoxide<br>(g/mi) | Oxides of<br>Nitrogen<br>(g/mi) | Formaldehyde<br>(mg/mi) | Particulates<br>(g/mi) |
| All PCs:<br>LDTs 8,500 lbs. GVW or less<br><br>Vehicles in this category are tested at their loaded vehicle weight.  | 50,000                              | LEV                             | 0.075          | 3.4                          | 0.05                            | 15                      | n/a                    |
|  |                                     | LEV, Option I                   | 0.075          | 3.4                          | 0.07                            | 15                      | n/a                    |
|  |                                     | ULEV                            | 0.040          | 1.7                          | 0.05                            | 8                       | n/a                    |
|  | 120,000                             | LEV                             | 0.090          | 4.2                          | 0.07                            | 18                      | 0.01                   |
|  |                                     | LEV, Option I                   | 0.090          | 4.2                          | 0.10                            | 18                      | 0.01                   |
|  |                                     | ULEV                            | 0.055          | 2.1                          | 0.07                            | 11                      | 0.01                   |
|  |                                     | SULEV                           | 0.010          | 1.0                          | 0.02                            | 4                       | 0.01                   |
|  | 150,000 (optional)                  | LEV                             | 0.090          | 4.2                          | 0.07                            | 18                      | 0.01                   |
|  |                                     | LEV, Option I                   | 0.090          | 4.2                          | 0.10                            | 18                      | 0.01                   |
|  |                                     | ULEV                            | 0.055          | 2.1                          | 0.07                            | 11                      | 0.01                   |
|  |                                     | SULEV                           | 0.010          | 1.0                          | 0.02                            | 4                       | 0.01                   |
| MDVs<br>8,501 - 10,000 lbs. GVW<br><br>Vehicles in this category are tested at their adjusted loaded vehicle weight.   | 120,000                             | LEV                             | 0.195          | 6.4                          | 0.2                             | 32                      | 0.12                   |
|  |                                     | ULEV                            | 0.143          | 6.4                          | 0.2                             | 16                      | 0.06                   |
|  |                                     | SULEV                           | 0.100          | 3.2                          | 0.1                             | 8                       | 0.06                   |
|  | 150,000 (Optional)                  | LEV                             | 0.195          | 6.4                          | 0.2                             | 32                      | 0.12                   |
|  |                                     | ULEV                            | 0.143          | 6.4                          | 0.2                             | 16                      | 0.06                   |
|  |                                     | SULEV                           | 0.100          | 3.2                          | 0.1                             | 8                       | 0.06                   |

27. The LEV I standards put in place by CARB between 2001 and 2003 allowed for significantly higher NOx emissions in diesel engines than do the LEV II standards that are now in place. Under LEV II, as indicated by the above chart, CARB makes no distinction between the NOx emissions of diesel vehicles and the emissions levels of gas powered vehicles.

28. Under CARB guidelines, vehicles are certified for sale by model year. Each model year requires a new certification and any modifications that relate to emissions, including production running changes or field fixes, must be approved by CARB.

29. For all vehicles manufactured since the 2001 model year, similar to the EPA's testing procedures, CARB requires that pre-production prototype vehicles be submitted for "durability and certification testing" to demonstrate that the vehicles will remain compliant throughout their useful life. CARB requires that these applications be submitted to CARB and

the EPA concurrently. California Environmental Protection Agency Air Resources Board, On-Road New Vehicle & Engine Certification Program, <http://www.arb.ca.gov/msprog/onroad/cert/cert.php> (last visited October 8, 2015).

30. After vehicles have received pre-production certification from CARB, the manufacturer must prepare and submit a detailed functional testing plan to CARB "at least 90 days prior to the start of production." State of California Air Resources Board, California Assembly-Line Test Procedures for 2001 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles (1999), <http://www.arb.ca.gov/msprog/levprog/cleandoc/altps01.pdf> (last visited October 8, 2015). This testing plan, which must provide for the testing of "all vehicles produced for sale in California," is designed to ensure that the production vehicles be "identical in all material respects to those for which certification was granted" prior to production. California Environmental Protection Agency Air Resources Board, On-Road New Vehicle & Engine Certification Program, *supra*. The plan must, among other things, "list[] the emission control components and systems to be tested and specif[y] the testing procedures to be used." *Id.* CARB guidelines list no fewer than thirty separate emissions related components which must be tested, including, the "diesel particulate control system," "Exhaust Gas Recirculation" or "EGR" systems, air flow sensors, oxygen sensors, and all components of the EGR Control System. *Id.* It must also include "on-board emission control diagnostic system of any type, either completely self-contained or requiring external peripheral equipment" included in the vehicle. *Id.* The testing plan must accommodate testing "during the vehicle assembly process before the end of the assembly line" where appropriate and provides that testing based on a sampling of vehicles is only appropriate where "components [] cannot practically be functionally checked on every

vehicle." *Id.* The manufacturer must submit a quarterly statement to CARB certifying that "the approved test plan has been conducted on all vehicles produced for sale in California. The statement shall be signed by an official of the manufacturer who has verified its accuracy and shall accompany the quarterly audit test report." *Id.*

31. CARB also maintains fleet average requirements for manufacturers that are generally more stringent than those required by the EPA. Each year, manufacturers are required to submit reports detailing the number of particular models sold in the state of California as well as the emissions reports relevant to those models in order to confirm compliance with fleet average standards.

32. CARB standards specifically refer to and adopt the federal prohibition of defeat devices set forth in 40 CFR § 86.1809-10.

**C. The Design of the Emissions Systems Used in Volkswagen 2.0 Liter TDI Clean Diesel Engines**

33. Typically, two approaches to reducing NOx emissions had been used in diesel engines, selective catalytic reduction ("SCR") and lean NOx trap ("LNT") systems. In engines using SCR, urea is injected into the exhaust stream, reacting with the NOx and converting it into nitrogen and oxygen. The SCR method is highly effective, but it adds weight and bulk to a car because it requires a tank to store the urea, a heater to keep the urea fluid, and pumps, valves, mixers and catalyst to maintain the reaction between the urea and the NOx. It also requires frequent servicing in order to refill the urea tank. In addition, SCR systems add approximately \$50 in the manufacturer's cost to produce a car.<sup>6</sup>

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<sup>6</sup> Tom De Chant, *Volkswagen's Little Engine that Couldn't*, NovaNext, Sept. 22, 2015, <http://www.pbs.org/wgbh/nova/next/tech/volkswagen-diesel-emissions/> (last accessed Oct. 9, 2015).

34. The lean NOx trap or LNT system is also sometimes referred to as a NOx storage catalytic converter. The system was initially designed by Toyota in the 1970s. In LNT systems, NOx is trapped and stored in a storage catalytic converter. When a storage catalytic converter is full, the stored NOx is burned off through the release of an extra blast of fuel into the engine's cylinders. The extra fuel travels to the catalytic converter where it burns off the stored NOx, converting it to nitrogen and oxygen. Under normal operating conditions, an LNT system burns this extra blast of fuel (sometimes referred to as a fuel-rich mixture) for one or two seconds every minute. The more often that a car is running on a fuel-rich mixture, the higher the car's fuel consumption is.

35. Until recent years, car makers generally preferred SCR because it offered better fuel economy and a proven track record. However, it appears that a substantial portion of the 482,000 automobiles equipped with the 2.0 liter TDI Clean Diesel engine and sold in the United States, specifically those sold in model years 2009-2011, were equipped with LNT systems.

**D. 2.0 Liter TDI Clean Diesel Engine Received Accolades**

36. Use of the LNT system was consistently highlighted by the Company and received wide accolades upon its introduction in 2009. The 2.0 TDI Clean Diesel was named one of Ward's ten best engines for three years straight following its introduction in 2009.

37. Celebrating the inclusion of the Volkswagen engine on the prestigious Ward's list, then-CEO Stefan Jacoby said "[w]e're pleased that Ward's has recognized our advanced 2.0-liter clean diesel engine as one of their 2009 10 Best Engines," "[t]he all-new 2.0L turbo diesel engine is not only the *first of its kind to be emissions-compliant in all 50 states*, but perhaps the *most technically refined powerplant of its kind in the world*." The Company further highlighted its use of the unusual LNT emissions system. "As the pioneering entry in the new era of clean

diesel in North America, the new TDI engine technology in the Jetta sedan and SportWagen meets the United States most stringent emissions control standard — California's Tier II/Bin 5 — without the use of urea injection. Additionally, the technology enables 20- to 40-percent better fuel efficiency than gasoline engines with comparable acceleration and significantly better torque.<sup>7</sup> The Company press release went on to note:

In response to the U.S. federal mandate for Ultra Low Sulfer Diesel (ULSD), Volkswagen has been able to greatly reduce nitrous oxide (NOx) and particulate emissions on its clean diesel TDI engines through use of three key technologies: a common rail direct injection system; piezo fuel injectors; and an advanced exhaust system aftertreatment system. The result is a reduction of NOx and particulate emissions by up to 90-percent; exceptional noise and vibration harshness performance; and fuel efficiency on par with more complex and expensive gas/electric hybrid systems.

*Id.*

38. In 2010, when the engine made the list for the second time, Ward's highlighted the engine's "gargantuan torque, fuel economy and driving pleasure," noting that "this pint-sized stump puller vaults the Jetta to the head of its segment with the ability to average nearly 44 mpg (5.3 L/100 km) by *Ward's* editors who weren't afraid to explore the space of the TDI's powerband."<sup>8</sup> Ward's again noted that "[t]he real story with the Jetta TDI begins in the exhaust stream, which requires no urea-injection, using only oxidation catalysts and regenerating particulate filters to meet emissions standards. It can be sold in all 50 states."<sup>9</sup>

39. Finally, in 2011, the engine made the Ward's list for the third straight year and Ward's noted the inclusion of a LNT system as being unique among diesel offerings in the

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<sup>7</sup> George Achorn, *Volkswagen's 2.0L Turbo Clean Diesel Engine Recognized as 2009 Ward's 10 Best Engine*, VW Vortex, Jan. 14, 2009, <http://www.vwvortex.com/news/volkswagen-news/volkswagen-s-2-0l-turbo-clean-diesel-engine-recognized-as-2009-ward-s-10-best-engine/> (last accessed October 8, 2015).

<sup>8</sup> Tom Murphy, *Volkswagen AG: 2.0L Turbocharged DOHC I-4 Diesel*, Wards Auto, Dec. 21, 2009, <http://wardsauto.com/news-amp-analysis/volkswagen-ag-20l-turbocharged-dohc-i-4-diesel> (last accessed October 8, 2015).

<sup>9</sup> *Id.*

United States. "Most compelling is the TDI's ability to meet 50-state U.S. and European emissions regulations without urea-injection after treatment necessary with larger diesel engines. Instead, the Jetta uses only oxidation catalysts and regenerating particulate filters to meet federal Tier 2 Bin 5 emissions standards."<sup>10</sup>

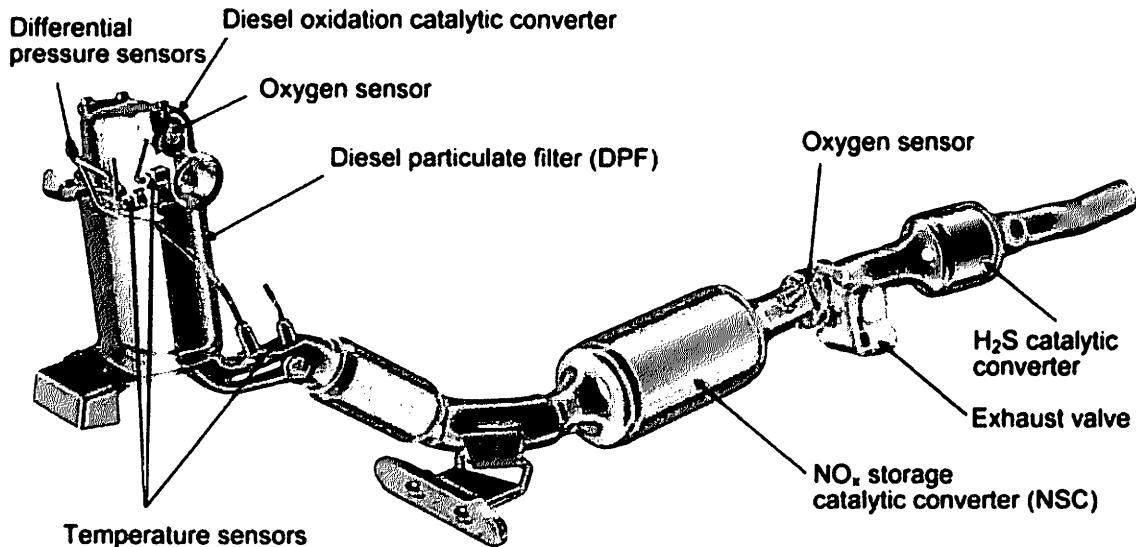
**E. Volkswagen's Fraudulent Defeat Device was Incorporated in Multiple Revisions of the Emissions System**

40. The defeat device utilized by Volkswagen was not simply designed into the 2.0 liter TDI Clean Diesel and forgotten about. Between the introduction of the engine in the 2009 model year and the discovery of the defeat device in September 2015, no fewer than three substantial revisions of the 2.0 liter TDI Clean Diesel emissions system were designed, each requiring that the defeat device itself be revised to incorporate changes necessary to operate with radically different emissions systems.

41. The first version of the system used a LNT system to meet TIER2/BINS standards. As discussed in detail in section C above, the LNT system functions by capturing NOx in a storage tank, called the NOx storage catalytic converter, and, when the tank is full, burning off the stored NOx by releasing extra fuel into the engine that is subsequently burned off in the emissions system and the NOx storage catalytic converter.

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<sup>10</sup> Murphy, *supra*.



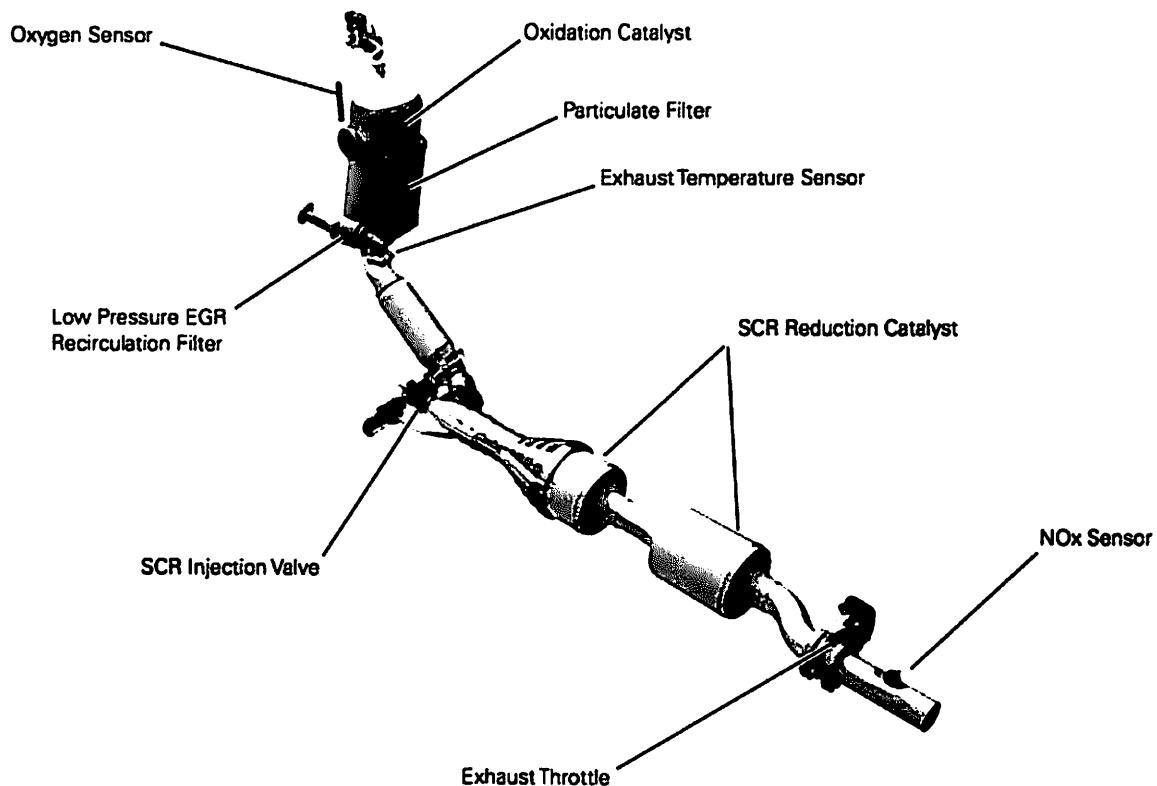
42. In the first generation emissions system, the defeat device likely functioned by preventing the burn off of stored NOx. Instead, when the NOx storage catalytic converter filled, additional NOx was likely released into the atmosphere. As a result, the defeat device would enhance fuel efficiency by preventing the release of fuel needed to catalyze or burn off the stored NOx. The defeat device also likely enhanced performance by diverting engine operation needed to power the catalyzation process. Industry commentators have opined that fixing this first generation system to bring it into compliance with TIER2/BIN5 standards will likely have a negative impact on both performance and fuel economy.<sup>11</sup>

43. The second generation of the emissions system, introduced in the 2012 model year for the Volkswagen Passat, utilized a selective catalytic reduction or SCR system rather than the LNT system used in the first generation system. This was a substantial redesign, necessitating the incorporation of urea storage tanks and substantially changing the service

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<sup>11</sup> Paul Lienert & Joseph W. Reuters, *Illegal VW diesel emission systems may require 2 solutions*, Automotive News, Sept. 30, 2015, <http://www.autonews.com/article/20150930/OEM11/150929774/illegal-vw-diesel-emission-systems-may-require-2-solutions>. (last accessed October 8, 2015).

process for subject vehicles because, as noted in section C, the SCR system requires periodic refilling of the urea tank. Volkswagen claimed that the improvements made both in the motor and the emissions system resulted in a 45% reduction in total emissions when compared the first generation system.<sup>12</sup>



44. This redesign also required a redesign of the defeat device. In the second generation of the emissions system, industry commentators have suggested that the defeat device functioned by substantially limiting the amount of urea used to treat NOx.<sup>13</sup> Using less urea allowed the emissions system to be designed with smaller urea tanks that required filling less

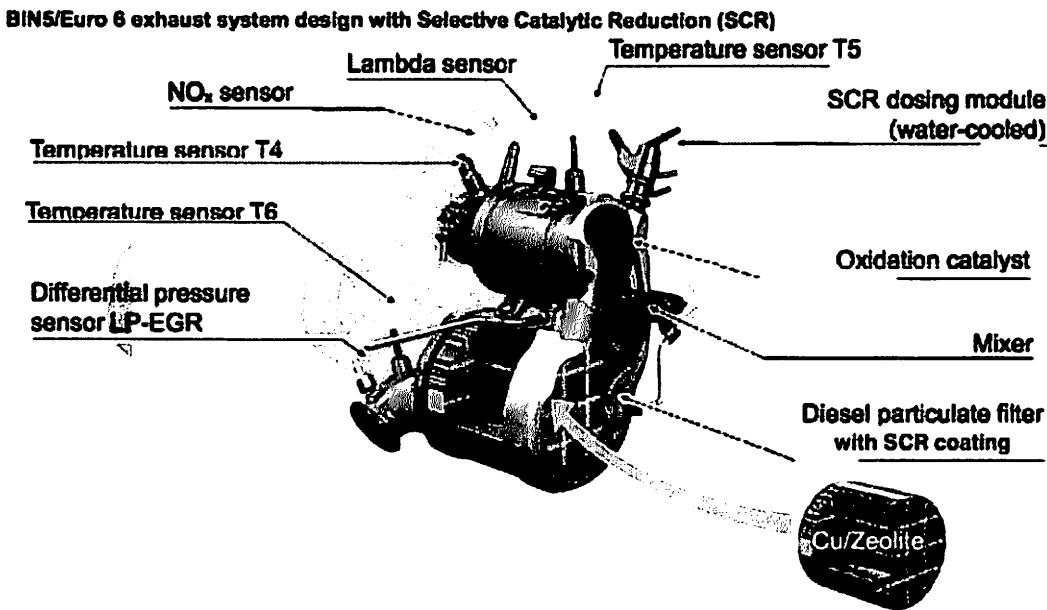
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<sup>12</sup> K.C. Colwell, *Detailed: VW's New 2.0-Liter EA288 Four-Cylinder TDI Diesel*, Car and Driver, Mar. 2, 2012, <http://blog.caranddriver.com/detailed-vw%20%99s-new-2-0-liter-ea288-four-cylinder-tdi-diesel/> (last accessed October 8, 2015).

<sup>13</sup> Paul Lienert & Joseph W. Reuters, *supra*

often than they otherwise would. Fixing this system in order to bring it into compliance with TIER2/BIN5 standards may require both a hardware and software fix, as a substantially larger urea storage tank may need to be installed. In the alternative, impacted cars may need much more frequent servicing in order to refill depleted urea tanks.

45. The third generation system, announced in 2014, reflected another substantial redesign of the emissions system, instead of being far from the engine, as is the case with more traditional exhaust systems, the third generation system was designed to be close-mounted to the engine and was modular, allowing the use of either a LNT or a SCR system.

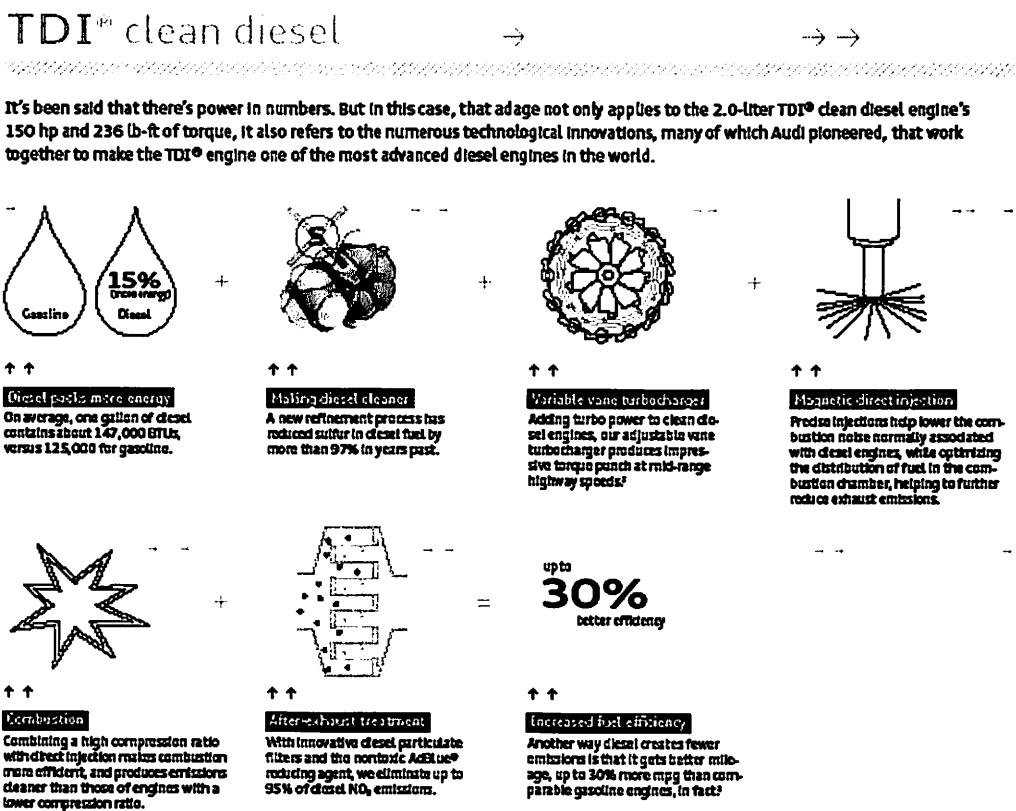


#### F. Volkswagen's Marketing Highlights the Performance, Efficiency and Environmental Benefits of its "Clean Diesel" Engine

46. Volkswagen consistently marketed the 2.0 liter TDI Clean Diesel equipped cars as fuel-efficient and environmentally friendly while still being performance oriented. The 2.0 liter TDI Clean Diesel, first introduced in 2009, was heralded as a significant technological improvement over older diesel engines. With its turbocharged direct injection ("TDI"), the 2.0 liter TDI Clean Diesel was marketed as providing the same fuel economy that diesel engines had

long been known for coupled with substantially enhanced performance, a no compromise mix of performance, fuel economy and clean emissions.

47. The "technical innovation" of the 2.0 liter TDI Clean Diesel engine was also touted by Volkswagen in marketing materials for its Audi line of cars. For example, the brochure for the 2015 Audi A3 provided a graphic explaining why the 2.0 liter TDI Clean Diesel was "one of the most advanced diesel engines in the world."

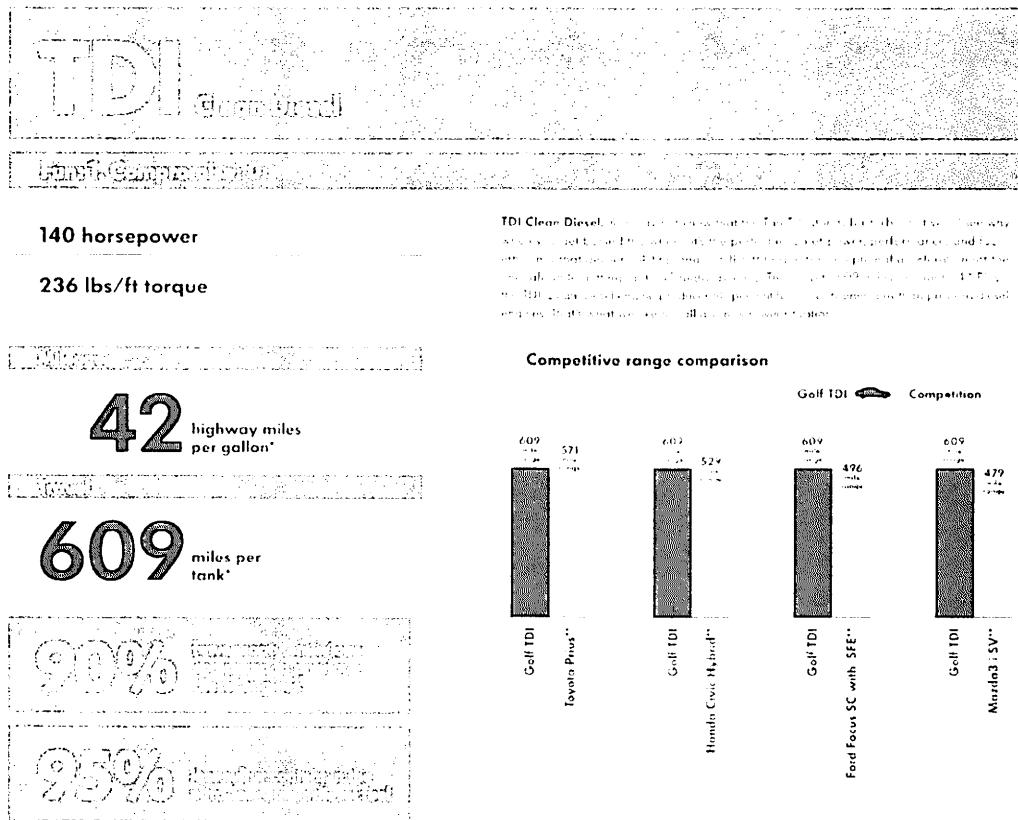


48. The 2012 Golf TDI Clean Diesel was marketed by Volkswagen as a clean, performance oriented car:

You may not know that the T in TDI stands for turbo, but you'll see why when you get behind the wheel. It's the perfect union of power, performance, and fuel efficiency that delivers 140 hp and 236 lbs/ft torque for exceptional acceleration off the line, all while getting up to 42 mpg. That's up to 609 miles on one tank.

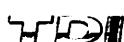
Plus, the TDI Clean Diesel engine produces 90 percent fewer sooty emissions than previous diesel engines. That's what we like to call a win-win-win situation.

### TDI Clean Diesel



49. While claiming to deliver on power and performance, Volkswagen also promised a car that was good for the environment. The 2013 Golf TDI Clean Diesel was sold as "Good, clean fun" with "236 lb/ft of torque for some serious oomph." "But what's more amazing is what is doesn't give you: those sooty emissions from years past. In fact, it has 90% fewer emissions than previous diesel engines." Volkswagen distinguished the TDI logo with a stripe of blue, explaining that "[t]he color blue symbolizes our commitment to building environmentally

conscious cars that don't compromise performance. And setting a good example for eco-conscious behavior, everywhere, and every day."



Go the distance. Volkswagen's TDI engines are designed to go further on a single tank of fuel than many other vehicles.

Think Blue.

The sky's the limit. Volkswagen's TDI engines are designed to go further on a single tank of fuel than many other vehicles.

This same Volkswagen marketing brochure claimed that in vehicles equipped with the 2.0 liter TDI Clean Diesel engine, "you get a lot more of everything, without giving up anything," promising "up to 814 highway miles on a single tank of fuel" and "all that addictive torque."

Beetle TDI



up to  
**594** hwy miles  
per tank\*

Passat TDI



up to  
**814** hwy miles  
per tank\*

Golf TDI



up to  
**594** hwy miles  
per tank\*

Beetle Convertible TDI



up to  
**580** hwy miles  
per tank\*

Jetta TDI



up to  
**667** hwy miles  
per tank\*

Touareg TDI



up to  
**765** hwy miles  
per tank\*

50. Brochures for the 2015 Volkswagen Jetta referred to the "efficient 2.0L TDI Clean Diesel engine" and highlighted claims of 46 MPG freeway gas mileage coupled with 236

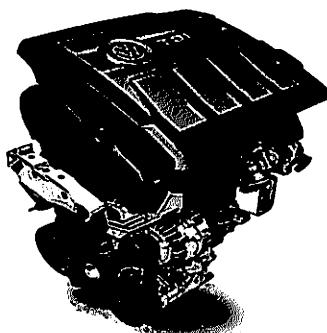
pound feet of torque as indicia that the car was both "efficient" and "performance" oriented. Similarly, marketing material for the 2015 Volkswagen Bug highlighted the 2.0L TDI Clean Diesel engine, stating "[s]aving has never been so fun. This available turbocharged diesel engine gets impressive mileage, along with putting out an equally impressive 236 lbs/ft of torque."

51. The 2015 Volkswagen Passat equipped with the 2.0 liter TDI Clean Diesel was marketed both for its performance and fuel economy: "[w]ith up to 43 hwy mpg, it's easy to see why the TDI Clean Diesel gives the Passat more range than any other midsize sedan in its class. And since it's turbocharged, we didn't have to sacrifice an ounce of power to be incredibly efficient."

52. Volkswagen marketed the 2.0 liter TDI Clean Diesel as a no-compromises engine, "Fast. Efficient. Stylish. Pick three."

## **Fast. Efficient. Stylish. Pick three.**

With a TDI Clean Diesel engine, you get a lot more of everything, without giving up anything. The direct-injection engine of the Passat TDI was engineered to go the distance — up to 814 highway miles on a single tank of fuel.\* Add in all that addictive torque and this will lead to road trip after road trip.



Volkswagen has sold more diesel cars in the U.S. than every other brand combined\*\*  
Turbocharged performance and efficiency!\*

53. The combination of performance, fuel efficiency and "clean" emissions was constantly highlighted by Volkswagen. For example the website for Volkswagen Group of America highlighted its technology under "Environment," "TDI: Clean Diesel for Everyone"

Audi and Volkswagen pioneered TDI clean diesel engines and today, the Volkswagen Group of America is *the market leader in clean diesel*. In 2013, Audi and Volkswagen sold more than 100,000 clean diesel cars in the United States. *Clean diesel delivers more torque, lower fuel consumption and reduces CO2 emissions compared with equivalent gasoline engines*. Volkswagen's newest and most fuel-efficient TDI Clean Diesel engine will power the 2015 Golf, Beetle, Passat and Jetta starting in the second half of 2014.

Audi has been at the forefront of clean diesel since the introduction of Audi TDI technology in 2009. Since then, nearly 40,000 Audi TDI vehicles have been sold in the United States, delivering an average of 30 percent better fuel economy and range than gasoline. Continuing our commitment to clean diesel technology and innovative solutions that improve efficiency and driving dynamics, Audi has made a dramatic expansion of TDI technology in the United States for the 2014 model year. Available TDI models include the A6, A7, A8 L, Q5 and Q7, as well as the introduction of the A3 TDI sedan.

Volkswagen Group of America, Clean Diesel TDI,

[http://www.volkswagengroupamerica.com/clean\\_diesel\\_tdi.html](http://www.volkswagengroupamerica.com/clean_diesel_tdi.html) (last accessed Sept. 22, 2015).

54. Volkswagen also made specific representations about "Making diesel cleaner," claiming that the 2.0 liter TDI Clean Diesel used in the Audi A3 "achieved ultra-low emissions vehicle (Bin-5/ULEV II) status in all 50 states while reducing emissions by an average of 12% compared to their gasoline equivalents." Volkswagen asserted that "[w]ith innovative diesel particulate filters and the nontoxic AdBlue® reducing agent, we eliminate 95% of diesel NOx emissions." According to Volkswagen this, coupled with the increased fuel efficiency of diesel resulted in an engine that gets "30% more mpg than comparable gasoline engines."

55. Prior to the publication of the EPA and CARB NOVs, Volkswagen had won wide praise for its implementation of the 2.0 liter TDI Clean Diesel engine. The 2011 Golf was

named by the Kelley Blue Book ("KBB"), one of the most widely relied on used car pricing guides, as one of the "Top 10 Green Cars" of 2011. KBB noted that the 2.0 liter TDI Clean Diesel engine was "capable of delivering quick launches and 42 highway miles per gallon." In addition, the Volkswagen Golf was named the 2015 Car of the Year by Motor Trend magazine. In naming the Golf, Motor Trend highlighted the performance and fuel economy of the 2.0 liter TDI Clean Diesel engine.

Even more impressive, Volkswagen has also included room in the line-up for diesel . . . versions of the Golf. The Golf TDI and its 2.0-liter turbo-diesel inline-four return an EPA combined rating of 36mpg . . . . The best part is that neither car is a penalty box to drive. What the TDI lacks in horsepower it mostly makes up for in torque. While it didn't feel quite as quick as the TSI, it was no slouch for a C-segment car.

Motor Trend further noted that "[n]o matter which Golf variant we jumped into, we emerged with smiles on our faces . . . [w]e were also impressed with the powertrains in our Golf variants – from the TDI's torquey low-end surge to the GTI's rev-happy rush, there wasn't a dud in the group."

56. Volkswagen's marketing of the 2.0 liter TDI Clean Diesel engine as a performance oriented, environmentally friendly engine worked and spawned a strong customer base in the United States. Autoweek columnist and digital editor Andrew Stoy, himself a TDI owner, explained the appeal:

During my ownership, through conversations with readers and while perusing online forums such as TDIClub.com, it became apparent that TDI buyers were, and are, like me, environmentally conscious driving enthusiasts. That we were unknowingly rolling coal, spewing exponentially more emissions into the atmosphere than we realized, and that Volkswagen was fully aware of its deception, carries a potent sting for those of us who believed the extra cost of a VW TDI was worth the fuel economy and emissions benefits.

Andrew Stoy, *Why Volkswagen's diesel betrayal is different*, Autoweek, Sept. 20, 2015, [http://www.volkswagengroupamerica.com/clean\\_diesel\\_tdi.html](http://www.volkswagengroupamerica.com/clean_diesel_tdi.html) (last accessed Oct. 8, 2015).

57. Volkswagen's false claims regarding its diesel engines appear to have continued through at least three versions of the 2.0 liter TDI Clean Diesel engine. For example, in 2014, as Volkswagen marketed a revised diesel engine slated for inclusion in 2015 models, Douglas Skorupski, Volkswagen's manager of technical strategy, described the 2015 revision to the 2.0 liter TDI Clean Diesel engine as "continuing to improve and will be even cleaner and more fuel-efficient and powerful." An article published by JD Power and Associates on March 19, 2014, noted that "Volkswagen says that the new engine produces fewer emissions, boasts improved throttle response, and experiences less internal friction, the latter enhancement contributing to better fuel-economy numbers." The article went on to note that:

[t]his is an important engine for Volkswagen. Last year, one out of every four VWs sold in the United States was equipped with a TDI Clean Diesel engine, according to the company, and together with VW Group's luxury brand Audi, more than 100,000 TDI Clean Diesel vehicles hit American roads.

Jeff Youngs, *New TDI Clean Diesel Engine Coming for 2015 Volkswagen Models*, JD Power, Mar. 19, 2014, <http://www.jdpower.com/cars/articles/car-news/new-tdi-clean-diesel-engine-coming-2015-volkswagen-models> (last accessed Oct. 8, 2015).

58. Even while revising and updating the 2.0 liter TDI Clean Diesel engine between the 2009 through 2015 model years, Volkswagen continued to include, in each revision, the illegal defeat device that allowed it to appear compliant with federal and state emissions requirements. And throughout this period, under normal operation, the 2.0 liter TDI Clean Diesel engine produced levels of NOx that were as much as forty times higher than the levels allowed under applicable emissions standards.

#### **G. The Disclosure of Volkswagen's Deceptive Acts Roils the Car Industry**

59. On Friday, September 18, 2015, Consumer Reports, a non-profit consumer advocacy group known for its independence and impartiality, responded to the EPA NOV by

announcing that it had "suspended its 'recommended' rating of two VW vehicles: The Jetta diesel and Passat diesel." In light of an expected recall, Consumer Reports stated that "[t]hese recommendations will be suspended until Consumer Reports can re-test these vehicles with a recall repair performed. Once the emissions systems are functioning properly, we will assess whether the repair has adversely affected performance or fuel economy." Consumer Reports' decision to suspend its ratings for these vehicles was driven by the seriousness of the EPA NOV.

60. In addition to suspending its recommendations, Consumer Reports issued a blistering statement by Ellen Bloom, the senior director of federal policy for Consumers Union:

This is a serious violation of the law. *Volkswagen was ripping off the consumer and hurting the environment at the same time.* The carmaker was apparently installing software in vehicles that effectively let them generate more pollution than advertised. It's outrageous. We applaud the EPA and California for cracking down on Volkswagen. These actions send a powerful message that if a carmaker uses technology to get around the rules, regulators are going to come down hard on you for breaking the law.

61. The statement issued by Consumer Reports also highlighted the impact of Volkswagen's fraud on the consumers who purchased cars equipped with the 2.0 liter TDI Clean Diesel engine, stating that "Volkswagen will likely have to recall the vehicles when they have a fix that satisfies both the EPA and CARB." The Consumer Reports statement went on to note that, while consumers could "continue to drive [the cars] normally" . . . substantial complications were likely to arise for consumers:

. . . while it is legal to sell the car, CARB and the California Department of Motor Vehicles may not allow the buyer to register the vehicle, and current owners may not be allowed to renew their registrations, until all the emission recall work has been completed. Some states that follow California emission standards (so-called Partial Zero Emission states) also have rules in place that require all emissions-related recalls to be completed before periodical emission testing. If the recall is not completed, the vehicle cannot pass the inspection, and the state will decline renewal of the vehicle registration.

**H. Volkswagen Acknowledges that it "Screwed Up" and Has "Broken the Trust" of "Our Customers and the Public"**

62. On Friday, September 18, 2015, shortly after the EPA and CARB NOVs were made public, Volkswagen issued a press release acknowledging the NOVs and claims that "the company takes this matter very seriously and is cooperating with the investigation."

63. Acknowledging a likely recall, the September 18, 2015 press release further stated that:

Volkswagen is committed to fixing this issue as soon as possible. We want to assure customers and owners of these models that their automobiles are safe to drive, and we are working to develop a remedy that meets emissions standards and satisfies our loyal and valued customers. Owners of these vehicles do not need to take any action at this time.

64. However, as the full extent of Volkswagen's deceit became public, the company was forced to issue an additional statement over the ensuing weekend, acknowledging "manipulations" by the company that resulted in the violation of environmental standards. Thus, on Sunday, September 20, 2015, Volkswagen issued this statement from the CEO of Volkswagen's parent company, Volkswagen AG, Martin Winterkorn.

**Wolfsburg, September 20, 2015 - The U.S. Environmental Protection Agency and the California Air Resources Board (EPA and CARB) revealed their findings that while testing diesel cars of the Volkswagen Group they have detected manipulations that violate American environmental standards.**

The Board of Management at Volkswagen AG takes these findings very seriously. *I personally am deeply sorry that we have broken the trust of our customers and the public.* We will cooperate fully with the responsible agencies, with transparency and urgency, to clearly, openly, and completely establish all of the facts of this case. Volkswagen has ordered an external investigation of this matter.

We do not and will not tolerate violations of any kind of our internal rules or of the law.

The trust of our customers and the public is and continues to be our most important asset. We at Volkswagen will do everything that must be done in order to *re-*

*establish the trust* that so many people have placed in us, and we will do everything necessary in order to *reverse the damage this has caused*. This matter has first priority for me, personally, and for our entire Board of Management.

65. On September 21, 2015, in Brooklyn, New York, Volkswagen CEO Michael Horn acknowledged that "we have totally screwed up."<sup>14</sup> Horn continued by acknowledging that "our company was dishonest with the EPA, and the California Air Resources Board and all of you." *Id.*

66. The revelations regarding the extent of Volkswagen's fraud continued on September 22, 2015 with Volkswagen's acknowledgment that eleven million cars sold by Volkswagen included the same defeat device discovery by the EPA and CARB. Volkswagen also announced that it had set aside \$7.3 billion to address the fall-out from its fraud. In addition, without public explanation, in late September Volkswagen AG suspended three high level managers who occupied key roles in the development of the 2.0 liter TDI Clean Diesel engine. Ulrich Hackenberg, the head of development for all Volkswagen Group brands, including Audi, had been the head of development for Volkswagen-brand cars from 2007 to 2013. Heinz-Jakob Neusser was the head of development for the Volkswagen brand. And finally, Wolfgang Hatz had been the head of engine and transmission development for all Volkswagen brands. Volkswagen AG has yet to acknowledge what role these three or former CEO Winterkorn, played in the development and use of the defeat device.

67. On September 23, 2015, even while claiming no knowledge of Volkswagen's purposeful use of defeat devices to evade compliance with laws, regulations and standards for

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<sup>14</sup> News Clip: Volkswagen: 'We Have Totally Screwed Up' (Reuters, 2015) (on file with NYTimes.com), accessed from <http://www.nytimes.com/video/business/international/100000003928968/volkswagen-we-have-totally-screwed-up.html?hp&action=click&pgtype=Homepage&modref=HPVideoRefer&module=first-column-region&region=top-news&WT.nav=top-news> (last accessed Oct. 8, 2015).

diesel emissions, Martin Winterkorn, resigned his position as CEO of Volkswagen AG. That same day, state prosecutors in Braunschwig, Germany announced that they were reviewing Volkswagen's actions to determine if criminal charges would be brought against individuals responsible for the defeat device. Under German law, companies cannot be criminally prosecuted.

68. In prepared remarks issued in advance of an October 8, 2015 hearing by the House Energy and Commerce subcommittee on oversight, Volkswagen of America CEO Michael Horn offered, "[o]n behalf of our company, and my colleagues in Germany, . . . a sincere apology for Volkswagen's use of a software program that served to defeat the regular emissions testing regime."<sup>15</sup> Horn further acknowledged that "We have broken the trust of our customers, dealerships, and employees, as well as the public and regulators." *Id.* During his testimony, Horn further acknowledged that Volkswagen must "get to the point that we put people first and not the pressure and corporate profits."<sup>16</sup>

69. Even while acknowledging that over eleven million vehicles were affected by Volkswagen's fraud, former Volkswagen CEO Martin Winterkorn and Volkswagen of America CEO Michael Horn continue to deny knowledge of the existence of the defeat device. On information and belief, Plaintiff alleges that Winterkorn and Horn knew of, and failed to

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<sup>15</sup> Michael Biesecker & Matthew Daly, *VW's US CEO to face tough questions in congressional hearing*, Associated Press, Oct. 8, 2015, retrieved from <http://www.businessinsider.com/ap-vws-us-ceo-to-face-tough-questions-in-congressional-hearing-2015-10> (last accessed Oct. 8, 2015).

<sup>16</sup> Mike Spector & Amy Harder, *Volkswagen U.S. CEO Says He Didn't Know in 2014 of Emissions Defeat Devices*, The Wall Street Journal, Oct. 8, 2015, <http://www.wsj.com/articles/volkswagen-u-s-ceo-says-he-didnt-know-in-2014-of-emissions-defeat-devices-1444316371> (last accessed Oct. 8, 2015).

disclose, Volkswagen's use of illegal defeat devices designed and implemented to evade emissions standards.

**I. Purchasers Paid a Premium for the 2.0 Liter TDI Clean Diesel Engine**

70. Marketing the 2.0 liter TDI Clean Diesel engine and performance-oriented and environmentally friendly cars with good fuel economy was important to Volkswagen because the sticker prices of diesels in general and the 2.0 liter TDI Clean Diesel engine equipped cars in particular, is substantially higher than equivalent cars with gas engines. For example, for the 2015 model year, diesel equipped Jetta started at \$21,640 while the gas-equipped Jetta were priced from \$17,325, representing a 25% premium.

71. With aggressive marketing, Volkswagen duped Plaintiff and Class Members into paying a substantial premium for their cars by stressing that the 2.0 Liter TDI Clean Diesel engine was performance oriented, fuel efficient and environmentally friendly. Following the revelation of Volkswagen's fraud, Plaintiff and members of the Class have seen the resale value of their vehicles plummet. On October 5, 2015, KBB reported that the average resale value of Volkswagens equipped with the 2.0 Liter TDI Clean Diesel engine had fallen 13% in less than one month.<sup>17</sup> The resale value of these cars may continue to decline, causing damages to Plaintiff and the Class in an amount to be proven at trial.

**J. Volkswagen's Defeat Device Breached Express Warranties**

72. In connection with the sale (by purchase or lease) of new vehicles, Volkswagen provided an express New Vehicle Limited Warranty, applicable to each vehicle and covering a

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<sup>17</sup> Associated Press, *Resale values falling for Volkswagen diesels*, CNBC, Oct. 6, 2015, <http://www.cnbc.com/2015/10/06/the-associated-press-resale-values-falling-for-volkswagen-diesels.html> (last accessed Oct. 8, 2015).

period of three years or 36,000 miles, whichever occurs first. This New Vehicle Limited Warranty "covers any repair to correct a manufacturing defect in materials or workmanship."

73. In addition, in its Federal Emissions Control System Defect Warranty, Volkswagen warranted every vehicle it sold for a period of two years or 24,000 miles and asserted that each of its vehicles:

- "was designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA)," and
- "is free from defects in material and workmanship which causes the vehicle to fail to conform with EPA regulations . . ."

#### **V. TOLLING OF THE STATUTE OF LIMITATIONS**

74. Any applicable statute(s) of limitations has been tolled by Defendants' knowing, active concealment and denial of the facts alleged herein. Plaintiff and the other Class Members could not have reasonably discovered that Volkswagen properly designed and installed a defeat device in the vehicles until shortly before this class action litigation was commenced.

75. Defendants were and remain under a continuing duty to disclose to Plaintiff and the other Class Members the true character, quality, and nature of the 2.0 liter TDI Clean Diesel engine, that this defect is a purposeful design by Volkswagen, will require costly repairs, and diminishes residual or the resale value of the affected vehicles. As a result of the active concealment by Defendants any and all statutes of limitations otherwise applicable to the allegations herein have been tolled.

#### **VI. CLASS ACTION ALLEGATIONS**

76. The claims of all Class Members derive directly from a single course of conduct by Volkswagen. Volkswagen has and continues to engage in uniform and standardized conduct

toward the Class. They did not differentiate, in degree of care or candor, their actions or inactions, in the content of their statements or omissions, among individual Class Members. The objective facts on these subjects are the same for all Class Members. Within each Claim for Relief asserted by the respective Classes, the same legal standards govern. Additionally, many states share the same legal standards and elements of proof, facilitating the certification of multi-state classes for some or all claims. Accordingly, Plaintiff brings this lawsuit as a class action on her own behalf and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

**A. Nationwide Consumer Class**

77. Plaintiff brings this action and seeks to certify and maintain it as a class action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure on her own behalf and on behalf of a Nationwide Consumer Class defined as follows:

All persons in the United States who purchased or leased vehicles manufactured by Volkswagen that were equipped with the 2.0 liter TDI Clean Diesel Engine subject to the September 18, 2015 Notice of Violation letters issued by the EPA and CARB.

**B. California Consumer Class**

78. Plaintiff alleges California class action claims on behalf of all persons defined as follows:

All persons in The State of California who purchased or leased vehicles manufactured by Volkswagen that are equipped with the 2.0 liter TDI Clean Diesel Engine that were subject to the September 18, 2015 Notice of Violation letters issued by the EPA and CARB.

79. The Nationwide Consumer Class, the California Consumer Class, and their members are sometimes referred to herein as the "Class" or "Classes."

80. Excluded from the Classes are: Volkswagen; any affiliate, parent, or subsidiary of Volkswagen; any entity in which Volkswagen has a controlling interest; any officer, director, or employee of Volkswagen; any successor or assign of Volkswagen; counsel for the Plaintiff or anyone employed by counsel for Plaintiff in this action and their immediate family; any Judge to whom this case is assigned and his or her immediate family and staff.

81. This action has been brought and may properly be maintained on behalf of the Class proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

82. **Numerosity.** This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). Plaintiff is informed and believes that there are over 482,000 defective Class Vehicles nationwide and thousands of defective Class Vehicles in the State of California, as alleged above. Individual joinder of all Class members is impracticable.

83. Each of the Classes is ascertainable because its members can be readily identified using registration records, sales records, production records, and other information kept by Defendants or third parties in the usual course of business and within their control. Plaintiff anticipates providing appropriate notice to each certified Class, in compliance with Fed. R. Civ. P. 23(c)(1)(2)(A) and/or (B), to be approved by the Court after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

84. **Existence and predominance of common questions.** Common questions of law and fact exist as to all Class Members and predominate over questions affecting only individual Class members as is required by Fed. R. Civ. P. 23(a)(2). These common questions include the following:

- a. Whether Volkswagen engaged in the conduct alleged herein;
- b. Whether Volkswagen designed, manufactured, advertised, marketed, distributed and sold vehicles with the 2.0 liter TDI Clean Diesel engine in the United States;
- c. Whether the 2.0 liter TDI Clean Diesel engine is defective in that it is not compliant with federal and state emissions standards and requirements;
- d. Whether the 2.0 liter TDI Clean Diesel engine was purposefully designed to include a defeat device in order to evade the requirements of federal and California state emissions standards and requirements;
- e. Whether and how long Volkswagen was aware of the existence of a defeat device in the 2.0 liter TDI Clean Diesel engine;
- f. Whether Volkswagen knowingly designed, manufactured, marketed, advertised, distributed and sold vehicles equipped with the 2.0 liter TDI Clean Diesel and a defeat device;
- g. Whether the 2.0 liter TDI Clean Diesel engine can be made, through a recall, to comply with federal and California state emissions standards and requirements;
- h. Whether any changes necessary to make vehicles equipped with the 2.0 liter TDI Clean Diesel engine compliant with federal and California state emissions standards and requirements will negatively impact the performance, fuel efficiency or function of the affected vehicles;
- i. Whether any changes necessary to make vehicles equipped with the 2.0 liter TDI Clean Diesel engine compliant with federal and California state emissions standards and requirements will diminish the residual or resale value of the affected vehicles;
- j. Whether purchasers of vehicles equipped with the 2.0 liter TDI Clean

Diesel engine overpaid for those vehicles;

k. Whether the Defendants engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices in trade or commerce by failing to disclose the existence of the defeat device;

l. Whether the Class Vehicles were unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability;

m. Whether Defendants are liable to the Class for damages and/or penalties, as a result of their own knowledge, conduct, action, or inaction, and if so, in what amount; and

n. Whether Plaintiff and the other Class members are entitled to equitable relief, including but not limited to restitution or a preliminary and/or permanent injunction.

85. **Typicality.** Plaintiff's claims are typical of the claims of the Class as is required by Fed. R. Civ. P. 23(a)(3), because, among other things, Plaintiff purchased a Class Vehicle which contain the same design defect found in all other Class Vehicles.

86. **Adequacy.** Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class Members she seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. The interests of Class Members will be fairly and adequately protected by Plaintiff and her counsel. As such, Plaintiff meets the requirements of Fed. R. Civ. P. 23(a)(4).

87. **Declaratory and Injunctive Relief.** Federal Rule of Civil Procedure 23(b)(2): Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the other

Class Members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

88. **Superiority.** The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class Member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Volkswagen economically feasible. Even if Class Members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing many actions arising from the design defect, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

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

a. the prosecution of separate actions by the individual Class Members would create a risk of inconsistent or varying adjudication with respect to individual Class members;

b. the prosecution of separate actions by individual Class Members would create varying standards of conduct required of the defendants;

c. the prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

d. Volkswagen has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

**VII. CLAIMS FOR RELIEF**

**COUNT I**  
**FRAUD BY CONCEALMENT**

90. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

91. Plaintiff brings this claim on behalf of herself and on behalf of the members of the Nationwide Consumer Class.

92. Defendants misrepresented, failed to disclose and or concealed facts from Plaintiff and Class Members which were known, or through reasonable care should have been known, by Defendants to be false and material and were intended by Defendants to mislead Plaintiff and the Class Members.

93. Defendants had a duty to disclose the existence of the defeat device and the non-compliance with federal and state laws and regulations regarding vehicle emissions because Defendants marketed vehicles equipped with the 2.0 liter TDI Clean Diesel engine as possessing certain performance and fuel economy characteristics and as being in compliance with all applicable federal and state emissions standards. Having made representations to the public about the functionality, fuel economy, performance and compliance with applicable laws and regulations of the 2.0 liter TDI Clean Diesel engine, Defendants were under a duty to disclose these omitted facts.

94. Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who had superior knowledge and access to the facts,

and Defendants knew these facts were not known to or reasonably discoverable by Plaintiff and the other Class Members. These concealed and omitted facts were material because they directly impact the performance, fuel economy, road worthiness and residual and resale value of vehicles equipped with the 2.0 liter TDI Clean Diesel engine.

95. Defendants actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff and Class Members to purchase or lease Class Vehicles at a higher price than the vehicles were in fact worth.

96. Plaintiff and other Class Members were unaware of these omitted material facts that were actively and intentionally concealed and/or suppressed, in whole or in part, by Defendants.

97. Had Plaintiff and Class Members known these material facts, they would not have acted as they did.

98. As a result of Defendants' conduct, Plaintiff and Class Members have been damaged because the residual and resale value of their vehicles equipped with the 2.0 liter TDI Clean Diesel engine have been diminished as a result of Defendants' fraudulent concealment of its scheme to circumvent federal and state emissions regulations, laws and standards.

99. In addition, based on information and belief, Plaintiff anticipates that any recall of the vehicles equipped with the 2.0 liter TDI Clean Diesel engine, if effective in meeting applicable federal and state emissions regulations, laws and standards, will degrade the performance and/or fuel economy of said vehicles, further reducing the residual or resale value of the vehicles.

100. Accordingly, Defendants are liable to Plaintiff and Class Members of the Class damages in an amount to be proven at trial, including, but not limited to punitive or exemplary damages.

## COUNT II

### INTENTIONAL MISREPRESENTATION

101. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

102. Plaintiff brings this claim on behalf of herself and on behalf of the members of the Nationwide Consumer Class.

103. Plaintiff purchased her Volkswagen vehicle equipped with the 2.0 liter TDI Clean Diesel engine based upon representations and advertisements wherein Volkswagen stated that vehicles equipped with the 2.0 liter TDI Clean Diesel were "clean", fuel efficient, and compliant with federal and state emission laws, regulations, and standards.

104. As set forth in detail above, Defendants knew that vehicles equipped with the 2.0 liter TDI Clean Diesel engine VW Clean Diesel Vehicles were not "clean" and were not compliant with federal and state emission laws, regulations and standards.

105. Plaintiff is informed and believes, and thereon alleges that Defendants undertook a systematic pattern of misrepresenting the true nature of vehicles equipped with the 2.0 liter TDI Clean Diesel engine, including but not limited to the true nature of their emissions. The exact misrepresentations made by Defendants are known exclusively by Defendants and the unidentified Class Members. This Complaint will be amended, if required, to specify each and every misrepresentation made by Defendants in its advertisements, sales materials etc.

106. By misrepresenting the true nature of vehicles equipped with the 2.0 liter TDI Clean Diesel engine, Defendants misrepresented to Plaintiff, Class Members of the Class, the EPA, CARB and other governmental agencies the actual amount of harmful emissions being placed into the environment by vehicles equipped with the 2.0 liter TDI Clean Diesel engine. Additionally, Plaintiff and Class Members paid more for their vehicles than they otherwise would have paid for similar vehicles that did not purport to be "clean" and fuel efficient.

107. Plaintiff is informed and believes, and thereon alleges, that these types of misrepresentations concerning the environmental impact of vehicles equipped with the 2.0 liter TDI Clean Diesel engine were commonly made by Defendants, caused by Defendants to be made and provided to Plaintiff and other Class Members. These common misrepresentations are material in that the amount paid by Plaintiff and other Class Members for vehicles equipped with the 2.0 liter TDI Clean Diesel engine and the prices of these vehicles were inflated as a result of the misrepresentations. Defendants' representations concerning the true nature of vehicles equipped with the 2.0 liter TDI Clean Diesel engine were, in fact, false and intentionally made to mislead Plaintiff and other Class Members.

108. The common representations made by Defendants regarding vehicles equipped with the 2.0 liter TDI Clean Diesel engine were made with the intention to induce Plaintiff and the other Class Members to rely upon them in order to induce the purchase the vehicles.

109. Reliance by Plaintiff and the other Class Members upon Defendants' representations was reasonable and justified under the circumstances alleged herein.

110. Reliance by Plaintiff and the other Class Members upon Defendants' representations was reasonable and justified given the fact that Defendants are a highly-regulated automobile manufacturer and distributor, with a legal duty to accurately calculate and report

emission levels to the EPA and various state regulators. Plaintiff and other Class Members had a right to rely on Defendants to accurately represent the information concerning vehicles equipped with the 2.0 liter TDI Clean Diesel engine.

111. Additionally, Plaintiff's and the other Class Members' reliance on Defendants' representations was reasonable and justified given the belief by Plaintiff and the other Class Members that Defendants would act in good faith in reporting information to the EPA and similar state regulators.

112. Plaintiff and the other Class Members had no reason to believe that the representations made to the EPA in Defendants' applications for certificates of conformity for vehicles equipped with the 2.0 liter TDI Clean Diesel engine were not true.

113. Plaintiff is informed and believes, and thereon alleges that, in reliance on these representations, Plaintiff and the other Class Members were induced to and did purchase vehicles equipped with the 2.0 liter TDI Clean Diesel engine based upon misrepresentations made by, or caused to be made by, Defendants.

114. As a proximate result of Defendants' wrongful acts and omissions as alleged herein, Plaintiff and the other Class Members have been damaged in an amount according to proof at time of trial including, but not limited to, damages needed to compensate Plaintiff and the other Class Members for the loss in fair market value that each of vehicles equipped with the 2.0 liter TDI Clean Diesel engine will suffer, as well as increased costs that may result due to decreases in vehicle performance once the vehicles equipped with the 2.0 liter TDI Clean Diesel engine are fixed through recall and brought into environmental compliance, assuming such a fix is possible.

### **COUNT III**

**VIOLATION OF MAGNUSON-MOSS WARRANTY ACT  
(15 U.S.C. § 2301, *et seq.*)**

115. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

116. Plaintiff brings this claim on behalf of herself and on behalf of the members of the Nationwide Consumer Class.

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

118. Defendants are "suppliers" and "warrantors" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

119. Vehicles equipped with the 2.0 liter TDI Clean Diesel engine are "consumer products" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1). Title 15, United States Code, section 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

120. Defendants' express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). Implied warranties for vehicles equipped with the 2.0 liter TDI Clean Diesel engine are covered under 15 U.S.C. § 2301(7). As described in detail above, Defendants breached these warranties.

121. Vehicles equipped with the 2.0 liter TDI Clean Diesel engine share a common defect in that they were designed and manufactured with a defeat device that prevents the vehicles from complying with applicable federal and state laws and regulations including, but not limited to, the Clean Air Act, when being driven under normal conditions.

122. Plaintiff and other Class Members have had sufficient direct dealings with either Defendants or their agents (dealerships and technical support) to establish privity of contract

between Defendants, on one hand, and Plaintiff and each Class Member on the other hand. In addition, Plaintiff and each of the other Class Members are intended third-party beneficiaries of contracts between Defendants and its dealers, and specifically, of Defendants' express and implied warranties. The dealers were not intended to be the ultimate consumers of vehicles equipped with the 2.0 liter TDI Clean Diesel engine and have no rights under the warranty agreements provided with these vehicles; the warranty agreements were designed for and intended to benefit the consumers only.

123. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here. Defendants have engaged in a multi-year scheme to conceal the existence and function of its defeat device, therefore misleading Plaintiff, Class Members and relevant regulatory authorities.

124. At the time of sale or lease of each Class Vehicle, Defendants knew, should have known, or were reckless in not knowing of their misrepresentations and omissions concerning vehicles equipped with the 2.0 liter TDI Clean Diesel engine and their inability to perform as warranted. Despite this knowledge, Defendants failed to rectify the situation and/or disclose the defect. Thus remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiff resort to an informal dispute resolution procedure and/or afford Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby deemed satisfied.

125. Plaintiff and other Class Members would suffer economic hardship if they returned their vehicles equipped with the 2.0 liter TDI Clean Diesel engines but did not receive the return of all payments made by them. Because Defendants are refusing to acknowledge any

revocation of acceptance and return immediately any payments made, Plaintiff and the other Class members have not re-accepted these vehicles by retaining them.

126. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

127. Plaintiff, individually and on behalf of all other members of the Class, seeks all damages permitted by law, including diminution in value of the vehicles equipped with the 2.0 liter TDI Clean Diesel engine, in an amount to be proven at trial.

#### **COUNT IV**

##### **VIOLATION OF THE CONSUMER PROTECTION ACT**

128. Plaintiff incorporates by reference the allegations set forth in above as if set forth fully herein.

129. Plaintiff brings this action for relief under Virginia Code § 59-1-196, et seq., pursuant to the Virginia Consumer Protection Act.

130. Under Virginia Code § 59-1-198 a "consumer transaction" is defined as "[t]he advertisement, sale, lease, license or offering for sale, lease or license goods or services to be used primarily for personal, family or household purposes." "Goods" is defines as "all real, personal or mixed property, tangible or intangible."

131. The advertising marketing, soliciting, proffer or supply of vehicles equipped with the 2.0 Liter TDI Clean Diesel engine by Defendant constitutes acts by a supplier under the Virginia Consumer Protections Act.

132. Virginia Code § 59.1-200.A. provides that: "[t]he following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful: . . . Misrepresenting that goods or services have certain quantities, characteristics,

ingredients, uses or benefits; [or] Misrepresenting that goods or services are of a particular standard, quality, grade, style or model."

133. The Defendants' acts and omissions, as well as their failure to use reasonable care in this matter, as alleged in this Complaint, including, but not limited to, the knowing misrepresentation of the 2.0 liter TDI Clean Diesel engine as being compliant with applicable emissions standards and regulations and the knowing inclusion of a defeat device designed to evade compliance with applicable emissions standards and regulations, constitute violations of the aforementioned provisions of the Virginia Consumer Protection Act.

134. Plaintiff has suffered actual damage as a result of the Defendants' violations of the aforementioned provisions of the Virginia Consumer Protection Act for which she is entitled to relief under Virginia Code § 59.1, 204, 205, 206 and/or 207.

#### COUNT V

##### **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW (California Business & Professions Code §§ 17500, *et seq.*) (On Behalf of the California Consumer Class)**

135. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

136. Plaintiff brings this claim on behalf of herself and on behalf of the members of the California Consumer Class.

California Bus. & Prof. Code § 17500 states:

It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

137. Defendants caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, including statements on the vehicle Monroney sticker and in nationally distributed print and video advertisements that vehicles equipped with the 2.0 liter TDI Clean Diesel engine were "clean diesel." Defendants also caused to be made or disseminated through California and the United States, through its USA Warranty and Maintenance booklet, the misrepresentation that vehicles equipped with the 2.0 liter TDI Clean Diesel engine were "designed, built and equipped so as to conform at the time of sale with all applicable regulations of the United States Environmental Protection Agency (EPA), and [are] free from defects in material and workmanship which causes the vehicle(s) to fail to conform with EPA regulations." These statements were known, or which by the exercise of reasonable care should have been known, to Defendants to be untrue and misleading to consumers, including Plaintiff and the other Class Members.

138. Defendants have violated section 17500 because the misrepresentations and omissions regarding the safety, reliability, and functionality of their Class Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

139. Plaintiff and the other Class Members have suffered an injury in fact, including the loss of money or property, as a result of Defendants' unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Class Vehicles, Plaintiff and the other members of the Class relied on the misrepresentations and/or omissions of Defendants with respect to the safety, reliability, and performance and fuel economy characteristics of the Class Vehicles. Defendants' representations were not to be true because the vehicles equipped with the 2.0 liter TDI Clean Diesel engine were designed, manufactured, and distributed with a defeat device designed solely

to circumvent federal and state emissions laws, regulations and standards. Had Plaintiff and Class Members known this, they would not have purchased or leased vehicles equipped with the 2.0 liter TDI Clean Diesel engine and/or paid as much for them. Accordingly, Plaintiff and other Class Members overpaid for their Class Vehicles and did not receive the benefit of their bargain.

140. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the state of California and nationwide.

141. Plaintiff, individually and on behalf of the other Class Members, requests that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and the other Class Members any money Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

## COUNT VI

### **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (California Commercial Code § 2314) (On Behalf of the California Consumer Class)**

142. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

143. Plaintiff brings this claim on behalf of herself and on behalf of the members of the California Consumer Class.

144. Defendants are and were at all relevant times merchants with respect to motor vehicles under California Commercial Code § 2104. A warranty that vehicles equipped with the

2.0 liter TDI Clean Diesel engine were in merchantable condition was implied by law in the instant transaction, pursuant to Cal. Com. Code § 2314.

145. Vehicles equipped with the 2.0 liter TDI Clean Diesel engine, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, vehicles equipped with the 2.0 liter TDI Clean Diesel engine were defective in that they were equipped with a defeat device, the sole purpose of which was to circumvent federal and state emissions standards.

146. Defendants were fully aware of this issue, as evidenced by the fact that on September 3, 2015, Volkswagen admitted to the EPA and CARB officials the existence of the defeat device and as evidenced by subsequent acknowledgements by Volkswagen executives as set forth in detail above.

147. Plaintiff and other Class Members have had sufficient direct dealings with either Defendants or their agents (dealerships) to establish privity of contract between Plaintiff and the other Class Members. Notwithstanding this, privity is not required in this case because Plaintiff and the other Class Members are intended third-party beneficiaries of contracts between Defendants and their dealers; specifically, they are the intended beneficiaries of Defendants' implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because Plaintiff's and the members of the Class' vehicles equipped with the 2.0 liter TDI Clean Diesel engine are dangerous instrumentalities due to the aforementioned defects.

148. As a direct and proximate result of Defendants' breach of the warranties of merchantability, Plaintiff and other Class Members have been damaged in an amount to be proven at trial.

## COUNT VII

### **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF EXPRESS WARRANTIES (California Civil Code §§ 1791.2 and 1793.2) (On Behalf of the California Consumer Class)**

149. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

150. Plaintiff brings this claim on behalf of herself and on behalf of the members of the California Consumer Class.

151. Plaintiff and the other Class Members who purchased or leased the Class Vehicles in California are "buyers" within the meaning of California Civil Code § 1791(b).

152. The Class Vehicles are "consumer goods" within the meaning of California Civil Code § 1791(a).

153. Defendants are "manufacturers" of the Class Vehicles within the meaning of California Civil Code § 1791(j).

154. Plaintiff and the other Class Members purchased/leased new motor vehicles manufactured by Defendants.

155. Defendants made express warranties to Plaintiff and the other Class Members within the meaning of California Civil Code §§ 1791.2 and 1793.2, as described above.

156. As set forth above, in the USA Warranty and Maintenance Booklet distributed with each Class Vehicle, Defendants expressly warranted through the New Vehicle Limited

Warranty and through Federal Emissions Warranty that they would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period.

157. As set forth above in detail, the Class Vehicles are inherently defective in that there are defects in the Class Vehicles' emissions system that render it out of compliance with federal and state emissions standards. This defect was and continues to be covered by Defendants' express warranties, and these defects substantially impair the use, value, and safety of the Class Vehicles to reasonable consumers like Plaintiff and the other Class members.

158. Defendants and their authorized repair facilities failed and continue to fail to repair the Class Vehicles to match Defendants' written warranties after a reasonable number of opportunities to do so.

159. Defendants and their authorized repair facilities refuse and have failed to replace the defective emissions system, even when they represented to federal and state officials that they were doing so.

160. Defendants did not promptly replace or buy back the Class Vehicles of Plaintiff and the other Class Members.

161. As a result of Defendants' breach of their express warranties, Plaintiff and the other Class Members received goods whose dangerous condition substantially impairs their value to Plaintiff and the other Class Members. Plaintiff and the other Class Members have been damaged as a result of the diminished value of the Class Vehicles and/or the failure of the Class Vehicles to possess the performance and/or fuel economy characteristics as advertised.

162. Pursuant to California Civil Code §§ 1793.2 & 1794, Plaintiff and the other Class Members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their

Class Vehicles. Pursuant to California Civil Code § 1794, Plaintiff and the other Class Members are entitled to costs and attorneys' fees.

## COUNT VIII

### **VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (California Civil Code §§ 1791.1 and 1792) (On Behalf of the California Consumer Class)**

163. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

164. Plaintiff brings this claim on behalf of herself and on behalf of the members of the California Consumer Class.

165. Plaintiff and the other Class Members who purchased or leased the Class Vehicles in California are "buyers" within the meaning of California Civil Code § 1791(b).

166. The Class Vehicles are "consumer goods" within the meaning of California Civil Code § 1791(a).

167. Defendants are "manufacturers" of the Class Vehicles within the meaning of California Civil Code § 1791(j).

168. Defendants impliedly warranted to Plaintiff and the other Class Members that their Class Vehicles were "merchantable" within the meaning of California Civil Code §§ 1791.1(a) & 1792, however, the Class Vehicles do not have the quality that a buyer would reasonably expect.

169. California Civil Code § 1791.1(a) states:

"Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following:

- (1) Pass without objection in the trade under the contract description.
- (2) Are fit for the ordinary purposes for which such goods are used.

- (3) Are adequately contained, packaged, and labeled.
- (4) Conform to the promises or affirmations of fact made on the container or label.

170. The Class Vehicles would not pass without objection in the automotive trade because of the defects in the Class Vehicles' emissions system that cause them to be out of compliance with state and federal emissions standards.

171. Because of the defects in the Class Vehicles' emissions systems, they are not safe to drive and not in compliance with federal and state laws, and thus not fit for ordinary purposes.

172. The Class Vehicles are not adequately labeled because the labeling fails to disclose the defects in the Class Vehicles' emissions systems.

173. Defendants breached the implied warranty of merchantability by manufacturing and selling Class Vehicles containing defects associated with the emissions system. Furthermore, these defects have caused Plaintiff and the other Class Members to not receive the benefit of their bargain and have caused Class Vehicles to depreciate in value.

174. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and the other Class Members received goods whose dangerous and dysfunctional condition substantially impairs their value to Plaintiff and the other Class Members. Plaintiff and the other Class Members have been damaged as a result of the diminished value of Defendants' products and the products' malfunctioning.

175. Pursuant to California Civil Code §§ 1791.1(d) & 1794, Plaintiff and the other Class Members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

176. Pursuant to California Civil Code § 1794, Plaintiff and the other Class Members are entitled to costs and attorneys' fees.

## COUNT IX

### **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (California Business & Professions Code §§ 17200, *et seq.*) (On Behalf of the California Consumer Class)**

177. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

178. Plaintiff brings this claim on behalf of herself and on behalf of the members of the California Consumer Class.

179. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, defines unfair business competition to include any "unfair," "unlawful," or "fraudulent" business act or practice. The Act also provides for injunctive relief, restitution, and disgorgement of profits for violations.

180. Defendants' unlawful, unfair, and fraudulent business acts and practices, as described herein, were and are in violation of the UCL. Defendants' conduct violates the UCL in the following ways:

- i. By knowingly and intentionally concealing from Plaintiff and the other Class Members that the Class Vehicles were designed and manufactured with a defeat device that rendered the Class Vehicles out of compliance with federal and state law and emissions standards while obtaining money from Plaintiff and the Class Members;
- ii. By marketing the Class Vehicles as being "clean diesel" and complying with federal and state emissions standards;

- iii. By violating federal laws, including the Clean Air Act, 42 U.S.C. §§ 7522(a)(1), 7522(a)(3)(B), 7524(a), and 40 C.F.R. § 19.4; and the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301; and
- iv. By violating other California laws, including California Civil Code §§ 1791.1, 1791.2, and 1792, *et seq.*, and California Commercial Code § 2314.

181. Defendants' misrepresentations and omissions alleged herein caused Plaintiff and the other Class Members to make their purchases or leases of their Class Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Class members would not have purchased or leased these Vehicles, would not have purchased or leased these Class Vehicles at the prices they paid, and/or would have purchased or leased alternative vehicles that complied with federal and state emissions standards.

182. Defendants' practice is also unfair since it has no utility and, even if it did, any utility is outweighed by the gravity of harm to Plaintiff and the Class Members.

183. Defendants' practice is also immoral, unethical, oppressive or unscrupulous and causes injury to consumers which outweigh its benefits.

184. Accordingly, Plaintiff and the Class Members have suffered injury in fact, including lost money or property as a result of Defendants' actions, misrepresentations, and omissions.

185. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Defendants, under California Business and Professions Code § 17200.

186. Plaintiff requests that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and Class Members any money Defendants acquired by unfair

competition, including restitution and/or restitutionary disgorgement, as provided in California Business and Professions Code § 17203 and California Civil Code § 3345; and for such other relief set forth below.

**COUNT X**

**BREACH OF CONTRACT/COMMON LAW WARRANTY  
(On Behalf of California Consumer Class)**

187. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

188. Plaintiff brings this claim on behalf of herself and on behalf of the members of the California Consumer Class.

189. To the extent that Defendants' limited remedies are deemed not to be warranties under California's Commercial Code, Plaintiff, individually and on behalf of the other Class Members, plead in the alternative under common law warranty and contract law. Defendants limited the remedies available to Plaintiff and the other Class Members to repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Defendant and/or warranted the quality or nature of those services to Plaintiff and the other Class Members.

190. Defendants breached this warranty or contract obligation by failing to repair or replace the defective emissions systems on vehicles equipped with the 2.0 liter TDI Clean Diesel engine.

191. The material terms of the contract also included the implied covenant of good faith and fair dealing, whereby Defendants promised that they would, in good faith and in the exercise of fair dealing, deal with Plaintiff the other Class Members fairly and honestly and do

nothing to impair, interfere with, hinder, or potentially injure Plaintiff's and the other Class Members' rights and benefits under the contract.

192. Plaintiff and the other Class Members have performed all conditions, covenants, and promises required by each of them on their part to be performed in accordance with the terms and conditions of the contract

193. Defendants breached the contract and the implied covenant of good faith and fair dealing by, *inter alia*, including a defeat device in vehicles equipped with the 2.0 liter TDI Clean Diesel engine, thus rendering these vehicles out of compliance with federal and state emissions laws, regulations and standards.

194. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiff and the other Class Members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

## COUNT XI

### **NEGLIGENT MISREPRESENTATION (On Behalf of California Consumer Class)**

195. Plaintiff incorporates by reference all allegations set forth above as if set forth fully herein.

196. Plaintiff brings this claim on behalf of herself and on behalf of the members of the California Consumer Class.

197. Defendants had a duty to provide honest and accurate information to customers so that customers could make informed decisions regarding the purchase or lease of automobiles.

198. Defendants specifically and expressly misrepresented material facts to Plaintiff and the other Class Members, as set forth in detail above, including, but not limited to

representations that vehicles equipped with the 2.0 liter TDI Clean Diesel engine complied with federal and state emissions laws, regulations and standards and possessed certain performance and fuel economy characteristics.

199. Defendants knew, or in the exercise of reasonable diligence should have known, that the ordinary consumer would be misled by these misrepresentations.

200. Plaintiff and the other Class Members justifiably relied on Defendants' misrepresentations and have been damaged thereby.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Class pray for judgment as follows:

1. For an order certifying this action as a class action;
2. For an order appointing Plaintiff as a representative of the Class and her counsel of record as Class counsel;
3. For an award of actual, general, special, incidental, statutory, compensatory and consequential damages on claims brought under the California Unfair Competition Law and False Advertising Law, breach of express and implied warranties under all relevant statutes, and in an amount to be proven at trial;
4. For an award of exemplary and punitive damages in an amount to be proven at trial;
5. For an order requiring Defendants to disgorge, restore, and return all monies wrongfully obtained together with interest calculated at the maximum legal rate;
6. For an order enjoining the wrongful conduct alleged herein;
7. For costs;
8. For interest;
9. For attorneys' fees under applicable law; and
10. For such other relief as the Court deems just and proper.

#### **DEMAND FOR JURY TRIAL**

201. Plaintiff hereby demands a jury trial for all claims so triable.

DATED: October 9, 2015

Respectfully submitted,



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FRANCIS J. BALINT, JR.

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Attorneys for Plaintiff

## **EXHIBIT A**



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 (NOx) 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 NOx. 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 AECDs<sup>1</sup> 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

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<sup>1</sup> There may be numerous engine maps associated with VW's "road calibration" that are AECDs, 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;<sup>[1]</sup> 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.<sup>[2]</sup> 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).

<sup>[1]</sup> \$2,750 for violations occurring prior to January 13, 2009.

<sup>[2]</sup> \$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 B**



## Air Resources Board



Matthew Rodriguez  
Secretary for  
Environmental Protection

Mary D. Nichols, Chair  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731 • [www.arb.ca.gov](http://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/VWU 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

*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>.*

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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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**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**

SARAH BOWLIN, on behalf of herself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.,  
Francis J. Balint, Jr. (VSB No. 21909)  
Joshua Gunnell House, Ste. 4, 4023 Chain Bridge Road, Fairfax, VA 22030  
Tel.: (602) 776-5903

**DEFENDANTS**

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

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)

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

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)                     |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 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)  
(For Diversity Cases Only)

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

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

| CONTRACT  | TORTS  | FORFEITURE/PENALTY  | BANKRUPTCY   | OTHER STATUTES  |
|---|--|---|--|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other   | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark  |
|   |  |   |  | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/ Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
|   |  |   | <b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input checked="" type="checkbox"/> 385 Property Damage Product Liability | <b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))   |
|   |  |   | <input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act          | <b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609  |
|   |  |   |  | <b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions   |

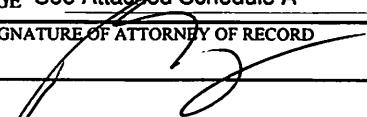
**V. ORIGIN** (Place an "X" in One Box Only)

- |   |   |  |   |  |   |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|---|---|--|---|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**15 U.S.C. § 2301**Brief description of cause:  
**Magnuson-Moss Warranty Act**

**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** See Attached Schedule A      **DOCKET NUMBER** \_\_\_\_\_

DATE **10-13-15**      SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

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

**Schedule A**

Currently pending before the Honorable Liam O'Grady are nine actions involving facts similar to those underlying this action:

*Steffensen et al v. Volkswagen Group of America, Inc.*, Case No. 1:15-cv-1218;

*Brewitt et al v. Volkswagen AG et al*, Case No. 1:15-cv-1223;

*Johnson et al v. Volkswagen Group Of America, Inc.* Case No. 1:15-cv-1225;

*Kolomeets-Darovsky, et al v. Volkswagen Group of America, Inc.*, Case No. 1:15-cv-1229;

*Proudlove, et al v. Volkswagen Group of America, et al*, Case No. 1:15-cv-1239;

*Shalov, et al v. Volkswagen Group of America, Inc.*, Case No. 1:15-cv-1241;

*Butler v. Volkswagen Group of America, Inc.*, Case No. 1:15-cv-1245;

*Hensgens, et al v. Volkswagen AG, et al*, Case No. 1:15-cv-1261; and

*Bourn, et al v. Volkswagen AG et al*, Case No. 1:15-cv-1295.

Court Name: United States District Court  
Divisions: 1  
Receipt Number: 14683054653  
Cashier ID: sbrown  
Transaction Date: 10/13/2015  
Payer Name: BONNETT FAIRBOURN

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CIVIL FILING FEE  
For: BONNETT FAIRBOURN  
Amount: \$400.00

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CREDIT CARD  
Amt Tendered: \$400.00

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

FILING FEE  
115CV1328