

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

HARRY BROWN, JR., individually and)
on behalf of all others similarly situated,)

Plaintiff,)

v.)

PORSCHE CARS NORTH AMERICA,)
INC., PORSCHE AG, and)
VOLKSWAGEN AG,)

Defendants.)

CIVIL ACTION NO.

**JURY TRIAL
DEMANDED**

CLASS ACTION COMPLAINT

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Plaintiff Harry Brown, Jr., individually and on behalf of all others similarly situated, alleges the following against Porsche Cars North America, Inc., Porsche AG, and Volkswagen AG, based upon personal knowledge, information and belief, and the investigation of counsel.

I. INTRODUCTION

1. This nationwide class action concerns the installation of so-called “defeat devices” on Porsche-branded vehicles with 3.0-liter diesel engines, including but not limited to Model Year 2014-2016 Porsche Cayenne Diesel vehicles, sold in the United States (“Defeat Device Vehicles”). Defendants marketed these vehicles as having achieved the hat trick of performance, extremely high fuel efficiency, and very low emissions. Although Defendants successfully marketed these expensive cars as environmentally friendly or “green,” these representations were a sham. Defendants did not actually make vehicles with the advertised desirable attributes.

2. Instead of delivering on their promises of extremely high fuel mileage coupled with low emissions, Defendants devised a way to make it appear that the Defeat Device Vehicles did what Defendants said they would when, in fact, they did not. Simply put, Defendants lied and have continued to lie over a period of years.

3. According to a Notice of Violation (“NOV”) issued by the U.S. Environmental Protection Agency (“EPA”) on November 2, 2015 and an In-Use Compliance (“IUC”) Letter issued on that date by the Air Resource Board (“ARB”) of the California Environmental Protection Agency, Defendants installed their “defeat device” in the 2015 Porsche Cayenne Diesel, among other vehicles equipped with 3.0-liter diesel engines. (*See* Exs. A, B). The NOV and IUC Letter indicate that the defeat device also was installed on several other 2014-2016 model year vehicles with 3.0-liter diesel engines in vehicle makes controlled by Defendant Volkswagen AG. Federal and state investigations are continuing into whether Defendants installed the defeat device in other vehicle models and/or model years. Therefore, this Complaint may be amended to include additional vehicle makes, models, and/or model years as new facts are discovered.

4. Defendants intentionally designed and installed defeat devices that work by switching on the full emissions control systems in Defendants’ cars only when the car is undergoing periodic emissions testing. The technology needed to control emissions from Defendants’ cars to meet state and federal emissions regulations reduces their performance, limiting acceleration, torque, and fuel efficiency.

5. To hide this, the defeat device effectively shuts off most of the emissions control systems in the car once the car has completed its emissions test. While that might have made the cars more fun to drive, it resulted in Defendants' cars sending approximately 9 times as much pollution into the environment as is allowed under the Clean Air Act and various state regulations.

6. On September 21, 2015, shortly after the EPA issued an NOV regarding similar defeat devices in certain Volkswagen vehicles with 2.0-liter diesel engines, *The New York Times* reported that while it is possible to lower the levels of nitrogen oxide emitted by diesel engines, the software installed in these Volkswagen vehicles "sidestepped this trade-off by giving a misleadingly low nitrogen-oxide reading during [standard emissions] tests." The software did so by "measur[ing] factors like the position of the steering wheel, the vehicle's speed and even barometric pressure to sense when the car was being tested The car's engine then configured itself to reduce emissions of nitrogen oxide." Jack Ewing, *Volkswagen Stock Falls as Automaker Tries to Contain Fallout*, N.Y. Times, Sept. 21, 2015, <http://nyti.ms/1QsrCAj>.

7. On September 30, 2015, *Compound Interest* published a graphic describing the emissions control devices installed on Volkswagen vehicles and explaining that the cars shut off some emissions control equipment when software

“detected when it was in test conditions (potentially by monitoring steering wheel movement or traction control deactivation).”

REDUCING VEHICLE EMISSIONS WITH CHEMISTRY

Millions of Volkswagen cars have been found to emit up to 40 times more nitrogen oxides in normal operation than they did during emissions testing, miring the company in controversy. This graphic looks at the devices present in a vehicle to help reduce pollution, and how they work.

POLLUTING COMPOUNDS

NO_x NITROGEN OXIDES
E.G. NITRIC OXIDE, NITROGEN DIOXIDE

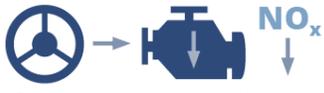
CO CARBON MONOXIDE

HC UNBURNT HYDROCARBONS
(FROM FUEL)



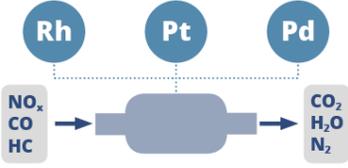
THE 'DEFEAT DEVICE'

The 'defeat device' found in Volkswagen cars is not a physical device, but a piece of software that detects when the car is being tested. When it detected this, it tuned the engine's performance reducing the NO_x emissions. In normal driving conditions they were much higher.



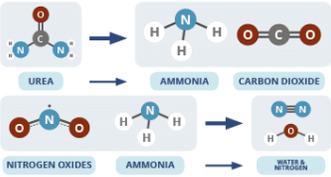
The car detected when it was in test conditions (potentially by monitoring steering wheel movement or traction control deactivation).

CATALYTIC CONVERTERS



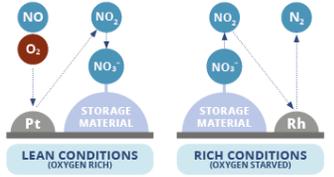
Three-way catalytic converters are present in all petrol-powered cars, and help remove carbon monoxide, unburnt hydrocarbons, and nitrogen oxides. They contain precious metals such as rhodium, platinum, and palladium to accomplish this. Three-way catalytic converters can't be used in diesel engines, as diesel's oxygen-rich exhaust gases make their removal of NO_x inefficient.

SELECTIVE CATALYTIC REDUCTION



Selective catalytic reduction (SCR) is a method for NO_x removal that is utilised in some diesel engines. It involves the injection of urea into the exhaust stream of the vehicle, where it produces ammonia, which is adsorbed onto a catalyst. The ammonia can then react with the nitrogen oxides in the exhaust stream to produce nitrogen and water. SCR is capable of achieving NO_x reductions of up to 90%.

NO_x ADSORBERS



NO_x adsorbers can also be used in diesel engines. The majority of NO_x emissions from the diesel engines are NO, and this is converted to NO₂ by reaction with oxygen using a platinum catalyst. The NO₂ is then absorbed in the form of nitrates by the storage material (often barium oxide). Once the trap is full, the nitrate can be desorbed, converted to nitrogen over a rhodium catalyst, and released.

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Compound Interest, *The Chemistry of Vehicle Emissions Reduction & The Volkswagen Scandal*, <http://www.compoundchem.com/2015/09/30/vehicle-emissions/> (Sept. 30, 2015).

8. More than 11 million vehicles worldwide are affected by Defendants' deception with respect to the 2.0-liter engines that were the subject of the EPA's earlier NOV. *EPA Says Volkswagen Cheated a Second Time on Pollution Tests*,

Al Jazeera America, Nov. 2, 2015, <http://alj.am/vjuy>. Defendant Volkswagen AG's stocks have plummeted, and even before the NOV regarding 3.0-liter diesel engines that is the subject of this Complaint, it set aside approximately \$7.3 billion, "the equivalent of half a year's profits," to cover the cost of bringing its vehicles into compliance with emissions standards. Jack Ewing, *Volkswagen Says 11 Million Cars Worldwide Are Affected in Diesel Deception*, N.Y. Times, Sept. 22, 2015, <http://nyti.ms/1MGozMS>. The Executive Committee of Defendant Volkswagen AG's Supervisory Board has publicly "recognize[d] . . . the economic damage caused" by "the manipulation of emissions data of Volkswagen Group diesel engines." Press Release, Statement from the Executive Committee of Volkswagen AG's Supervisory Board (Sept. 23, 2015), *available at* http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/AR_Erklaerung.html (last visited Nov. 3, 2015).

9. The November 2, 2015 NOV describes how the defeat device worked in the 3.0-liter diesel engine. Defendants "manufactured and installed software in the electronic control module (ECM) of each vehicle that causes the vehicle to perform differently when it is being tested for compliance with EPA emissions standards than in normal operation and use." Specifically, when the software senses that the vehicle is undergoing the FTP 75 federal emissions test procedure,

“it directs the vehicle to employ a low NOx temperature conditioning mode.” In this mode, “the vehicle operates under a number of emission control parameters, including injection timing, exhaust gas recirculation rate, and common rail fuel pressure,” such that NOx levels are reduced and the vehicle meets emissions standards. The software also employs a timer that coincides with the temperature conditioning mode, so that exactly one second after the completion of the initial phases of the FTP 75 procedure, the “software directs the vehicle to cease low NOx temperature conditioning mode” and transitions to “normal mode.” In “normal mode,” the car employs different settings that yield NOx emissions up to nine times the EPA standard, depending on the vehicle model and drive cycle (e.g., city or highway driving). “[W]hen the vehicle starts under conditions that the software determines *are not* the beginning of the FTP 75” test, the vehicle is set to use the “normal mode” parameters from the start. (Ex. A).

10. Defendant Volkswagen AG’s chief executive, Martin Winterkorn, resigned in the wake of the earlier revelations regarding vehicles with 2.0-liter diesel engines. Following his resignation, Defendant Volkswagen AG named Matthias Müller to be its new Chief Executive Officer. At the time of his appointment, Müller was Chairman of Porsche AG and a member of the Board of Management of Volkswagen AG.

11. While Volkswagen has admitted its deception with respect to the vehicles with 2.0-liter engines, Defendants have publicly denied installing the defeat devices on the Subject 3.0-liter Defeat Device Vehicles. Defendant Porsche Cars North America issued a statement on November 2, 2015, stating it was “surprised” to receive the NOV and it had believed the Porsche Cayenne Diesel to be “fully compliant” with regulations. Press Release, Porsche, Porsche Cars North America Statement Regarding EPA Notice of Violation (Nov. 2, 2015), <http://press.porsche.com/news/release.php?id=958>. Defendant Volkswagen AG issued a separate statement asserting that “no software has been installed in the 3-liter V6 diesel power units to alter emissions characteristics in a forbidden manner.” Press Release, Volkswagen AG, Statement on the Announcement by the United States Environmental Protection Agency (EPA) (Nov. 2, 2015), http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/11/Stellungnahme.html.

12. Because of Defendants’ actions, the cars it sold to Plaintiffs are not what Defendants promised. They are not environmentally friendly, “clean” diesels. Instead, they are dirty diesels: cars that pollute so much that they violate state and federal environmental protection laws. Moreover, when the emissions

systems designed to decrease pollution are activated, the cars' performance is diminished and they get worse mileage than advertised.

13. These untenable circumstances not only undermine the reasons consumers paid a premium to lease or own their purportedly "clean" diesel cars, but substantially decrease the current and resale value of the vehicles.

II. PARTIES, JURISDICTION, AND VENUE

14. Plaintiff Harry Brown, Jr. is a citizen and domiciliary of Georgia.

15. Mr. Brown is the owner of a 2014 Porsche Cayenne Diesel.

16. Defendant Porsche Cars North America, Inc. ("PCNA") is a corporation organized under the laws of Delaware and with its principal place of business in Georgia. PCNA is the exclusive importer of Porsche vehicles for distribution, sale, and use in every state in the United States of America. PCNA may be served with process by delivering a copy of the Summons and Complaint to its registered agent for service of process, Corporation Process Company, 2180 Satellite Blvd., Suite 400, Duluth, Georgia 30097. PCNA is subject to the jurisdiction of this Court.

17. PCNA is a wholly owned subsidiary of Defendant Porsche AG.

18. Defendant Porsche AG is a corporation organized under the laws of Germany and with its headquarters in Germany. Porsche AG is the parent

corporation and sole owner of PCNA. Porsche AG directly controls and directs the actions of PCNA, which acts as its agent in the United States of America. Porsche AG develops and manufactures Porsche-branded vehicles for distribution, sale, and use in every state in the United States of America. Porsche AG may be served pursuant to the Hague Convention on Service at: Dr. Ing. h.c. F. Porsche AG, Porscheplatz 1, D-70435 Stuttgart, Germany. When Porsche AG is served with a copy of the Summons and Complaint, it will be subject to the specific and/or general jurisdiction of this Court because it conducts business in Georgia, has sufficient minimum contacts with Georgia, and has purposefully availed itself of this forum by directing and controlling the actions of its subsidiary, PCNA, in Georgia.

19. Defendant Volkswagen AG is a corporation organized under the laws of Germany and with its headquarters in Germany. Volkswagen AG is the parent corporation and controlling owner of Porsche AG. Volkswagen AG directly controls and directs the actions of Porsche AG and uses its agent Porsche AG to develop and manufacture Porsche-branded vehicles. Volkswagen AG may be served pursuant to the Hague Convention on Service at: Volkswagen Aktiengesellschaft, Berliner Ring 2, 38440 Wolfsburg, Germany. When Volkswagen AG is served with a copy of the Summons and Complaint, it will be

subject to the specific and/or general jurisdiction of this Court because it conducts business in Georgia, has sufficient minimum contacts with Georgia, and has purposefully availed itself of this forum by directing and controlling the actions of its direct subsidiary, Porsche AG, and/or its indirect subsidiary, PCNA, in Georgia.

20. At all relevant times, Defendants manufactured, distributed, sold, leased, and warranted the Defeat Device Vehicles under the Porsche brand name throughout the nation. Defendants and/or their agents designed the “CleanDiesel” engines and engine control systems in the Defeat Device Vehicles, including the “defeat device.” Defendants also developed and disseminated the owners’ manuals and warranty booklets, advertisements, and other promotional materials relating to the Defeat Device Vehicles.

21. The remarkable level of centralized and intimate control Volkswagen AG and former CEO Winterkorn exert or have exerted over its direct and indirect subsidiaries is well-documented. Volkswagen AG itself has described in corporate governance documents that its Board of Management sets forth targets and requirements with which its subsidiaries must comply. Volkswagen AG exerts significant, and sometimes total, control over the design, technology, marketing, and manufacturing of the vehicles it sells through PCNA in Georgia and throughout the United States.

22. *Bloomberg Business* has also noted that “[d]ecision-making at Volkswagen is highly centralized. Winterkorn and a couple dozen managers vet product plans in Wolfsburg, including detailed lists of components that differentiate between new and standardized parts.” *Bloomberg Business* reported that Winterkorn sought “to loosen that structure by pushing more authority to brand and regional managers,” but Winterkorn did not accomplish any such decentralization before stepping down as CEO of Volkswagen AG. In short, Volkswagen AG tightly controls the actions of its subsidiaries and agents to perform the critical task of selling its cars in the United States. As a result, this Court has specific jurisdiction over Volkswagen AG.

23. Similarly, Porsche AG closely directed and controlled the actions of its agent PCNA in advertising and selling in the United States Porsche-branded cars manufactured in Germany. As a result, this Court has specific jurisdiction over Porsche AG.

24. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from at least one Defendant, at least one class member is a citizen of a State and at least one defendant is a citizen or subject of a

foreign state, there are more than 100 class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

25. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred and/or emanated from this District, as set forth in more detail below, and because Defendants have caused harm to class members residing in this District, as explained below.

26. Defendants conduct substantial business in this District. PCNA has been headquartered in Atlanta, Georgia since 1998, where it employs approximately 300 people to provide parts, service, marketing, and training for 189 dealers. PCNA also operates the Porsche Experience Center in Atlanta, one of only two such centers in the United States, featuring a driver development track, business center, human performance center, and fine-dining restaurant on 27.4 acres.

27. On information and belief, employees in this District witnessed, participated in, and/or had knowledge of the fraudulent activities giving rise to Plaintiffs' claims. Notably, the EPA's November 2nd NOV was addressed to only two individuals associated with Porsche-branded vehicles: Joseph Folz, the Vice President, General Counsel, and Secretary of PCNA, and Walter J. Lewis, the

Manager, Regulatory Affairs for PCNA. The address of the Atlanta headquarters was given for both of these individuals.

28. In addition, Defendants have marketed, advertised, sold and leased the Defeat Device Vehicles in this District and have caused harm to class members residing in this District.

III. FACTUAL ALLEGATIONS

29. Defendants intentionally designed, marketed, and sold cars in order to mislead consumers and regulators about the amount of pollution those cars created and the fuel efficiency they produced. Despite touting themselves as an environmentally conscientious company that produced efficient, well-handling cars for people who cared about the environment, Defendants sold expensive cars that produced pollution at orders of a magnitude above federal and state regulations, then intentionally and knowingly hid this truth.

A. Defendants Tout Their Diesel Vehicles As Being Fuel-Efficient and Good for the Environment

30. For years, Volkswagen AG has advertised its diesel vehicles as low-emission, fuel-efficient cars. Indeed, this marketing message is at the core of its image in the United States. It has been a successful advertising campaign:

Volkswagen has become the largest seller of diesel passenger vehicles in the United States.

31. Defendants' success is based in large part on promoting their diesel cars as "clean" and "green" vehicles. Being both highly efficient and "clean" are the centerpieces of Defendants' diesel engine marketing campaign. "CleanDiesel" is in the very name of the vehicles about which Defendants lied.

32. Long after Volkswagen AG became aware that its vehicles were deliberately designed to cheat emissions tests, and even after EPA issued a Notice of Violation regarding vehicles with 2.0-liter diesel engines, Volkswagen continued to mislead consumers.

33. Defendants expanded their diesel lineup to include additional, Porsche- and Audi-branded 3.0-liter TDI equipped models that are the subject of the November 2nd NOV and this Complaint. These vehicles were advertised as "sipping fuel" while offering cleaner emissions than gasoline models and offering excellent performance, using phrases like "beauty with benevolence," "intelligent performance," and "a cleaner future."

34. Defendants also supported and directed a website to promote their "Clean Diesel" technology, www.clearlybetterdiesel.org, which says the Clean Diesel technology has "such low (classical) pollutant emissions that they meet the

strict-limit values in all 50 federal states, including California,” while at the same time having on average 18% greater fuel efficiency than corresponding gasoline models, making it “possible for a Volkswagen Passat Clean Diesel or a Porsche Cayenne Clean Diesel to travel over 700 miles on the highway” on a single tank.

35. Unfortunately for consumers who bought Defendants’ cars and for people who breathe the air into which Defendants’ cars emit extraordinary amounts of pollutants, Defendants’ representations were far from the truth. Defendants have designed and sold cars that emit pollutants at breathtaking levels, failing state and federal environmental regulations by incredible margins.

B. Defendants Intentionally Hid the Excessive and Illegal Levels of Pollution Emitted From Their Cars

36. The EPA’s investigation of vehicles under the Volkswagen AG umbrella was prompted by a May 15, 2014, publication titled “In-Use Emissions Testing of Light-Duty Diesel Vehicles in the United States” by the Center for Alternative Fuels, Engines & Emissions (CAFEE) at West Virginia University (“the CAFEE Report”).

37. The International Council of Clean Transportation (ICCT) contracted CAFEE to conduct in-use testing of three light-duty diesel vehicles. According to

the CAFEE Report, when they tested those vehicles, “real-world NOx emissions were found to exceed the US-EPA ... standard by a factor[s] of 5 to 35.”

38. While neither emissions testing on a dynamometer (essentially a treadmill for a car) nor using set driving routes meant to simulate different operational situations—such as highway, city, or hilly routes—can perfectly duplicate all real-world driving, they provide approximations of expected emissions that allow regulators and testers to determine if cars’ emissions are within tolerable limits.

39. CAFEE tested three vehicles, two of which were Volkswagens: a 2012 Jetta TDI and a 2013 Passat TDI, the latter of which was equipped with a urea catalyst system but also, apparently, a defeat device. On the dynamometer, the Volkswagens’ nitrous oxide emissions were well within allowable limits—because, it is now known, they were equipped with defeat devices that turned emissions controls fully on. But in real-world driving, these emissions controls were switched off, and the cars emitted nitrous oxides at levels orders of magnitude greater than EPA limits.

40. In more strenuous operational situations requiring greater engine power, such as climbing steep hills, it is not surprising that a car might emit somewhat more than on a dynamometer, but not by multiples or orders of magnitude.

41. Those findings show that, contrary to Defendants' self-promotion as a "green" company, their diesel cars are unhealthy and unlawful.

42. Defendants' defeat devices that cause those high levels of emissions are part of a computerized engine control system that monitors sensors throughout the cars' engine and exhaust systems and controls operation of the cars' systems to ensure optimal performance. The functions controlled by those systems include fuel injection, valve and ignition timing, and, as in Defendants' "Clean Diesel" engines, operation of the engine's turbocharger. The engine control computer can, for example, ensure that the air-to-fuel mixture is correct based on sensor readings such as throttle position, air flow, and engine temperature.

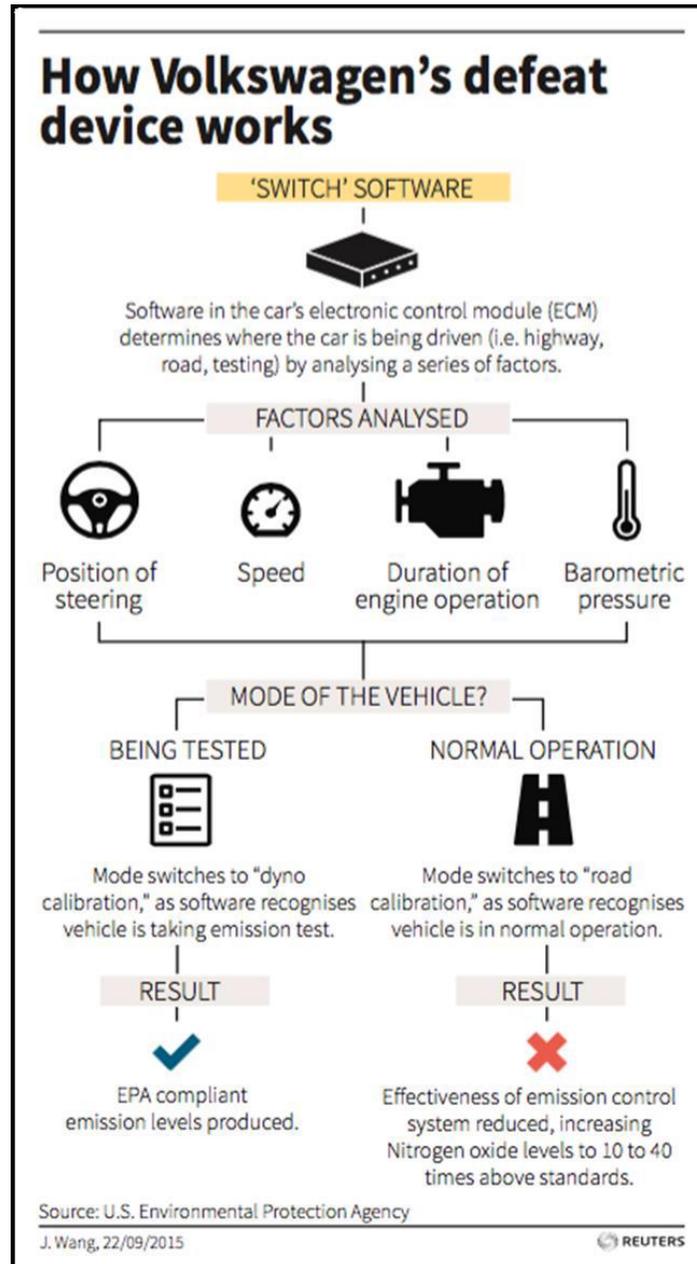
43. These engine control computers also receive data from sensors in the car's exhaust system that measure the amounts of chemical substances included in the car's exhaust. Those data provide a measure of the engine's operation and efficiency, and are thus used by the engine control computer in operating the car's systems to ensure the desired performance and efficiency.

44. Because modern cars include these sophisticated computers and sensors throughout the car's systems, emissions testing sometimes uses a car's existing sensors to measure the presence of pollutants and track compliance with EPA and state emissions standards. Emissions testing stations plug a diagnostic

device into the car's on-board diagnostics ("OBD II") port and use the car's own exhaust sensors during the testing procedure to measure the substances emitted. Some states, instead of or in addition to an OBD II diagnostic device, use a probe inserted into the car's exhaust pipe to measure the chemicals emitted.

45. Defendants programmed the engine control computers in the Defeat Device Vehicles with software that detects when the cars are undergoing emissions testing, and then operates the car's engine and exhaust systems to ensure that emissions comply with EPA pollutant standards. When the car is not being emissions tested—that is, under the vast majority of operating conditions—the engine control systems operate the vehicle in a manner that does not comply with EPA emissions requirements.

46. This graphic distributed by Reuters summarizes that process:



Erin Brodwin, *There's a Monstrous Issue at the Heart of the VW Scandal That No One's Talking About*, Business Insider, Sept. 22, 2015,

<http://www.businessinsider.com/volkswagen-scandal-bad-for-environment-2015-9>.

47. In short, this software allows Defendants' vehicles to meet emissions standards in labs or state testing stations while permitting the vehicles to emit nitrogen oxide (NOx) at up to 40 times the standard allowed under United States laws and regulations during normal operation.

48. As the journal *Popular Mechanics* recently reported, non-Volkswagen diesels commonly use urea injection to "neutralize" NOx emission, but those systems add weight and complexity. "Everyone wondered how VW met emissions standards while foregoing urea injection. As it turns out, they didn't. It wasn't magical German engineering. Just plain old fraud," the journal reported. Ezra Dyer, *This VW Diesel Scandal is Much Worse Than a Recall*, *Popular Mechanics*, Sept. 21, 2015, <http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/>.

49. EPA and ARB have now announced that even in 3.0-liter vehicles equipped with urea injection systems, Defendants used defeat device software, and these vehicles still emitted NOx at up to nine times permitted levels.

50. NOx pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. Exposure to these pollutants has been linked with serious health dangers, including asthma attacks and other respiratory illnesses serious enough to send people to the hospital. Ozone and particulate matter

exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory illnesses are at an acute risk of health effects from these pollutants.

51. The Clean Air Act has strict emissions standards for vehicles, and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the United States meet applicable federal emissions standards to control air pollution. Every vehicle sold in the United States must be covered by an EPA-issued certificate of conformity. Under federal law, cars equipped with defeat devices, which reduce the effectiveness of emissions control systems during normal driving conditions, cannot be certified.

52. This is not the first time Volkswagen allegedly engineered vehicles to cheat emission standards. In addition to its admission that it installed the defeat devices in vehicles with 2.0-liter diesel engines, Volkswagen also paid a \$120,000 fine to EPA in 1974 in order to settle charges that “it gamed pollution control systems in four models by changing carburetor settings and shutting off an emissions-control system at low temperatures.” Jerry Hirsch, *U.S. Taxpayers Duped Into Shelling Out \$51 Million in Green Subsidies for “Clean” VW Vehicles*, L.A. Times, Sept. 21, 2015, <http://www.latimes.com/business/autos/la-fi-vw-subsidies-20150922-story.html>.

53. Moreover, it appears Volkswagen was warned as long ago as 2007 by its suppliers and own employees not to cheat on emissions tests in its modern diesel engines. According to a report by the Associated Press, “VW’s internal investigation has found a 2007 letter from parts supplier Bosch warning Volkswagen not to use the software during regular operation.” Also, “a Volkswagen technician raised concerns about illegal practices in connection with emissions levels in 2011.” Associated Press, *Reports: VW Warned About Illegal Emissions Tricks Years Ago*, The Big Story, <http://bigstory.ap.org/article/0d0aac4f046e47629959557a94ae66af/reports-vw-warned-about-illegal-emissions-tricks-year-ago>.

54. Despite those warnings, Volkswagen manufactured, marketed, and sold cars with defeat devices designed to allow for higher levels of emissions than those allowed by state and federal law, violating the Clean Air Act, defrauding its customers, and engaging in unfair competition under state and federal laws.

C. Defendants Have Profited Handsomely From Their Diesel Vehicles

55. Defendants charge and consumers pay substantial premiums for the Defeat Device Vehicles. For example, according to Defendants’ website, for the current model year Porsche Cayenne, the base model with a gasoline engine has a starting MSRP of \$58,300. The base Porsche Cayenne Diesel, however, has a

starting MSRP of \$62,300, including a price premium of \$4,000. Similarly, Volkswagen AG's Audi A6, A7, and Q5 3.0 TDI models carry a suggested MSRP \$2,100 greater than the comparable gasoline models, while the 3.0 TDI version of the Audi A8L costs \$3,700 more than the comparable gasoline model.

D. Volkswagen's Illegal Actions Have Caused Class Members Significant Harm

56. The EPA has ordered Defendants to repair the Defeat Device Vehicles so that they comply with EPA emissions requirements. But such a repair will not compensate Plaintiffs and the class for the significant harm Defendants' deception has caused. That is true for at least two reasons.

57. First, any repairs performed as part of the recall are likely to diminish the performance of the Defeat Device Vehicles. Defendants will likely not be able to make those vehicles compliant with state and federal regulations without degrading performance, fuel efficiency, or both. That is so because any solution will likely involve reprogramming the Defeat Device Vehicles' software to engage the emissions control equipment (which currently only operates when the vehicles are being emissions tested) at all times in a manner that reduces engine power and fuel economy to bring NOx emissions within legal limits. Plaintiff's and Class Members' cars will therefore not perform as advertised.

58. Second, the recall cannot compensate for the financial damages Plaintiff and Class Members have suffered, including the premium Plaintiff's and the Class paid to own or lease their "clean" diesel vehicles, the inevitable reduction in resale value caused by the recall, and the increase in fuel expenses as the vehicles become less efficient following reprogramming.

59. The resale values of Plaintiff's and Class Members' vehicles have dropped or will drop since the announcement of the emission defeat device. This effect has already been seen on the vehicles with 2.0-liter engines that were the subject of the EPA's first NOV. Kelley Blue Book ("KBB"), www.kbb.com, is known as the nationwide "go-to" pricing guide for used cars. KBB has an established car valuation methodology and its values are broadly accepted in the industry by both buyers and sellers of used cars. Information from KBB for the 2.0-liter vehicles shows that their values dropped rapidly. For example, the resale value of a 2013 Jetta in very good condition with 2,400 miles dropped nearly \$1,000 in less than a week. The November 2nd NOV will have the same deleterious effect on resale values for the 3.0-liter Defeat Device Vehicles that are the subject of this Complaint.

60. Third, Plaintiff and Class Members are already experiencing reputational harm as unwilling vectors for Defendants' pollution-producing vehicles.

61. For those reasons, as a result of Defendants' unfair, deceptive, and/or fraudulent business practices, and their failure to disclose that under normal operating conditions the Defeat Device Vehicles emit many times the allowed levels of NO_x, owners and/or lessees of the Defeat Device Vehicles have suffered losses in money and/or property.

62. Had Plaintiff and Class Members known of the "defeat device" at the time they purchased or leased their Defeat Device Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did.

63. According to media sources, Volkswagen AG's recently ousted CEO, Martin Winterkorn, said with respect to the originally disclosed 2.0-liter vehicles that he was "deeply sorry that we have broken the trust of our customers and the public," and that Defendants would be suspending sales of some 2015 and 2016 vehicles with diesel engines. However, Defendants refuse to accept responsibility for their actions with respect to Plaintiff's and Class Members' 3.0-liter Defeat Device Vehicles, insisting publicly that they have not done anything wrong.

64. In sum, Defendants' deliberate strategy to value profit over the truth, human health, and the environment, has caused serious harm to consumers nationwide.

E. The Investigation of Defendants Has Close Connections with the State of Georgia

65. The November 2, 2015 NOV is addressed to four individuals, all located in the United States. The two individuals associated with the Porsche brand, Joseph Folz and Walter J. Lewis, are officials of Defendant PCNA and are located in Atlanta, Georgia.

66. Defendants are closely tied to the Atlanta area, and relevant documents and witnesses are likely located in the Atlanta area. Defendants' U.S. activities with respect to the Porsche brand are routed through PCNA's headquarters in Atlanta, Georgia. PCNA is the exclusive importer for Porsche vehicles in North America and has been headquartered in Atlanta, Georgia since 1998, where it employs approximately 300 people to provide parts, service, marketing, and training for 189 dealers.

67. Defendants manufactured, distributed, sold, leased, and warranted the Defeat Device Vehicles under the Porsche brand name throughout the nation. Defendants and/or their agents designed the "CleanDiesel" engines and engine

control systems in the Defeat Device Vehicles, including the “defeat device.” Defendants also developed and disseminated the owners’ manuals and warranty booklets, advertisements, and other promotional materials relating to the Defeat Device Vehicles. All of these activities reached consumers and the general public through Porsche’s Atlanta-based activities.

68. PCNA does further business in this District through its operation of the Porsche Experience Center in Atlanta, one of only two such centers in the United States, featuring a driver development track, business center, human performance center, and fine-dining restaurant on 27.4 acres.

IV. PLAINTIFF’S SPECIFIC OPERATIVE FACTS

69. Plaintiff Harry Brown, Jr., a citizen and resident of Georgia, purchased a 2014 Porsche Cayenne Diesel.

70. Mr. Brown chose the Porsche Cayenne Diesel based on its advertised combination of excellent fuel economy, environmentally friendly emissions, and performance.

71. Mr. Brown paid a premium for the “Clean” Porsche Cayenne Diesel. Had he known that the car did not meet EPA emissions standards, and did not live up to its advertised characteristics, he would never have bought it in the first place, much less paid a premium for it. Mr. Brown is disappointed to learn of

Defendants' deceptive conduct and has lost faith in the company. He believes that Defendants' actions have significantly diminished the current and future resale value of his car. He is not comfortable driving his car now that Defendants' deceptive conduct has come to light.

72. Mr. Brown is further concerned that any "fix" or modification Defendants now attempt as part of a recall will have a deleterious effect on fuel efficiency, performance, and/or reliability. He is concerned about long-term repair costs and reliability while stuck with a vehicle that is not what was promised and will suffer a severe loss of value. He is concerned that any "fix" now implemented would be untested and unproven, and could require additional expensive maintenance and repair.

V. CLASS ACTION ALLEGATIONS

73. Plaintiff brings this action on behalf of himself and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class:

All persons or entities in the United States who are current or former owners and/or lessees of a 3.0-liter engine, Porsche-branded diesel "Defeat Device Vehicle," including, without limitation, Model Year ("MY") 2014-2016 Porsche Cayenne Diesel vehicles.

74. Excluded from the Class are individuals who have personal injury claims resulting from the "defeat device" in the CleanDiesel system. Also excluded

from the Class are Volkswagen AG and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiff reserves the right to revise the Class definition based upon information learned through discovery.

75. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

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

A. Numerosity (Fed.R.Civ.P. 23(a)(1))

77. The members of the Class are so numerous and geographically dispersed that individual joinder of all Class Members is impracticable. While Plaintiff is informed and believes that there are not less than tens of thousands of members of the Class, the precise number of Class Members is unknown to Plaintiff, but it may be ascertained from Defendants' records. Class Members may be notified of the pendency of this action by recognized, Court-approved notice

dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

B. Commonality and Predominance (Fed.R.Civ.P. 23(a)(2), (b)(3))

78. This action involves common questions of law and fact, which predominate over any questions affecting individual Class Members, including, without limitation:

- (a) Whether Defendants engaged in the conduct alleged herein;
- (b) Whether Defendants designed, advertised, marketed, distributed, leased, sold, or otherwise placed Defeat Device Vehicles into the stream of commerce in the United States;
- (c) Whether the CleanDiesel engine system in the Defeat Device Vehicles contains a defect in that it does not comply with EPA requirements;
- (d) Whether the CleanDiesel engine systems in Defeat Device Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Defeat Device Vehicles;
- (e) Whether Defendants knew about the “defeat device” and, if so, how long they have known;
- (f) Whether Defendants designed, manufactured, marketed, and distributed Defeat Device Vehicles with a “defeat device;”

- (g) Whether Defendants' conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;
- (h) Whether Plaintiff and the other Class Members overpaid for their Defeat Device Vehicles;
- (i) Whether Plaintiff and the other Class Members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief;
- (j) Whether Plaintiff and the other Class Members are entitled to damages and other monetary relief and, if so, in what amount; and
- (k) Whether Defendants continue to unlawfully conceal and misrepresent whether additional vehicles, besides those in the EPA's Notices of Violation, are in fact Defeat Device Vehicles.

C. Typicality (Fed.R.Civ.P. 23(a)(3))

79. Plaintiff's claims are typical of the other Class Members' claims because, among other things, all Class Members were comparably injured through Volkswagen's wrongful conduct as described above.

D. Adequacy (Fed.R.Civ.P. 23(a)(4))

80. Plaintiff is an adequate Class representative because his interests do not conflict with the interests of other members of the Class he seeks to represent; Plaintiff has retained counsel competent and experienced in complex class action

litigation; and Plaintiff intends to prosecute the action vigorously. The Class's interests will be fairly and adequately protected by Plaintiff and his counsel.

E. Declaratory and Injunctive Relief (Fed.R.Civ.P. 23(b)(2))

81. Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

F. Superiority (Fed.R.Civ.P. 23(b)(3))

82. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class Members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for members of the Class to individually seek redress for Defendants' wrongful conduct.

83. Even if Class Members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. 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.

VI. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED

A. Discovery Rule Tolling

84. The tolling doctrine was made for cases of concealment like this one. For the following reasons, any otherwise-applicable statutes of limitation have been tolled by the discovery rule with respect to all claims.

85. Through the exercise of reasonable diligence, and within any applicable statutes of limitation, Plaintiff and members of the proposed Class could not have discovered that Defendants were concealing and misrepresenting the true emissions levels of their vehicles, including but not limited to their use of defeat devices.

86. The International Council on Clean Transportation first noticed the difference between Volkswagen's emissions in testing laboratories and in normal use on the road. The International Council on Clean Transportation brought the defeat device issue to the attention of the EPA. The EPA, in turn, conducted further tests on the vehicles, and ultimately uncovered the unlawful use of the defeat device software in vehicles with 2.0-liter engines. Only a further governmental investigation following the first NOV revealed the inclusion of the defeat device

software in the 3.0-liter vehicles that are the subject of this Complaint. Thus, Defendants' deception with respect to its Clean Diesel engines, engine control systems, and "defeat devices" was painstakingly concealed from consumers and regulators alike.

87. Plaintiff and the other Class Members could not reasonably discover, and did not know of facts that would have caused a reasonable person to suspect, that Defendants intentionally failed to report information within its knowledge to federal and state authorities, its dealerships, or consumers.

88. Likewise, a reasonable and diligent investigation could not have disclosed that Defendants had information in their sole possession about the existence of their sophisticated emissions deception and that they concealed that information, which was discovered by Plaintiff immediately before this action was filed. Plaintiff and other Class Members could not have previously learned that Defendants valued profits over compliance with applicable federal and state emissions and consumer law.

B. Tolling Due to Fraudulent Concealment

89. Throughout the relevant time period, all applicable statutes of limitation have been tolled by Defendants' knowing and active fraudulent concealment and denial of the facts alleged in this Complaint.

90. Instead of disclosing their deception, or that the emissions from the Defeat Device Vehicles were far worse than represented, Defendants falsely represented and continue to represent that their vehicles complied with federal and state emissions standards, and that they were reputable manufacturers whose representations could be trusted.

C. Estoppel

91. Defendants had a continuous duty to disclose to Plaintiff and the other Class Members the facts that they knew about the emissions from Defeat Device Vehicles, and of those vehicles' failure to comply with federal and state laws.

92. Although they had the duty throughout the relevant period to disclose to Plaintiff and Class Members that they had engaged in the deception described in this Complaint, Defendants chose to evade federal and state emissions and clean air standards with respect to the Defeat Device Vehicles, and they intentionally misrepresented and continue to misrepresent their blatant and deceptive lack of compliance with state law regulating vehicle emissions and clean air.

93. Thus, Defendants are estopped from relying on any statutes of limitations in defense of this action.

VII. CAUSES OF ACTION

COUNT I

FRAUD BY CONCEALMENT (common law)

94. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

95. Plaintiff brings this claim on behalf of himself and the Class.

96. Defendants intentionally concealed and suppressed material facts concerning the quality and character of the Defeat Device Vehicles. As alleged in this Complaint, Defendants engaged in deception to evade federal and state vehicle emissions standards by installing software designed to conceal their vehicles' emissions of the pollutants, which contributes to the creation of ozone and smog.

97. The software installed on the vehicles at issue was designed nefariously to kick in during emissions certification testing, such that the vehicles would show far lower emissions than when actually operating on the road. The result was what Defendants intended: Vehicles passed emissions certifications by way of deliberately induced readings that do not reflect normal operations. Reportedly, Defendants' deliberate, secret deception resulted in noxious emissions from these vehicles at approximately 9 times applicable standards.

98. Plaintiff and Class Members reasonably relied upon Defendants' false representations. They had no way of knowing that Defendants' representations

were false and gravely misleading. As alleged herein, Defendants employed extremely sophisticated methods of deception. Plaintiff and Class Members did not, and could not, unravel Defendants' deception on their own.

99. Defendants concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen AG and its subsidiaries—one characterized by an emphasis on profits and sales above compliance with federal and state clean air law and emissions regulations that are meant to protect the public and consumers. They also emphasized profits and sales above the trust that Plaintiff and Class Members placed in their representations.

100. Necessarily, Defendants also took steps to ensure their employees did not reveal the details of their deception to regulators or consumers, including Plaintiff and Class Members. Defendants did so in order to boost the reputations of their vehicles and to falsely assure purchasers and lessors of their vehicles, including certified previously owned vehicles, that Defendants are reputable manufacturers that comply with applicable law, including federal and state clean air law and emissions regulations, and that their vehicles likewise comply with applicable laws and regulations.

101. Defendants' false representations were material to consumers, both because they concerned the quality of the Defeat Device Vehicles, including their

compliance with applicable federal and state laws and regulations regarding clean air and emissions, and also because the representations played a significant role in the value of the vehicles. As Defendants well knew, their customers, including Plaintiff and Class Members, highly valued that the vehicles they were purchasing or leasing were clean diesel cars, and they paid accordingly.

102. Defendants had a duty to disclose the emissions deception they engaged in with respect to the vehicles at issue because knowledge of the deception and its details were known and/or accessible only to Defendants, because Defendants had exclusive knowledge as to implementation and maintenance of their deception, and because Defendants knew the facts were unknown to or not reasonably discoverable by Plaintiff or Class Members.

103. Defendants also had a duty to disclose because they made general affirmative representations about the qualities of their vehicles with respect to emissions standards, starting with references to them as clean diesel cars, or cars with clean diesel engines, which were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the emissions deception, the actual emissions of their vehicles, their actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and their actual practices with respect to the vehicles at issue.

104. Having volunteered to provide information to Plaintiff and the Class, Defendants had the duty to disclose the entire truth. These omitted and concealed facts were material because they directly affect the value of the Defeat Device Vehicles purchased or leased by Plaintiff and Class Members. Whether a manufacturer's products comply with federal and state clean air law and emissions regulations, and whether that manufacturer tells the truth with respect to such compliance or non-compliance, are material concerns to a consumer, including with respect to the emissions certifications testing their vehicles must pass. Defendants represented to Plaintiff and Class Members that they were purchasing clean diesel vehicles, and certification testing appeared to confirm this—except that, secretly, Defendants had thoroughly subverted the testing process.

105. Defendants actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect their profits and to avoid the perception that their vehicles did not or could not comply with federal and state laws governing clean air and emissions, which perception would hurt the brand's image and cost Defendants money, and they did so at the expense of Plaintiff and Class Members.

106. Volkswagen still has not made full and adequate disclosures, particularly as to past conduct, and continues to defraud Plaintiff and Class

Members by concealing material information regarding both the emissions qualities of their vehicles and their emissions deception.

107. Plaintiff and Class Members were unaware of the omitted material facts referenced herein, and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased purportedly “clean” diesel cars manufactured by Defendants, and/or would not have continued to drive their heavily polluting vehicles, or would have taken other affirmative steps in light of the information concealed from them. Plaintiff’s and Class Members’ actions were justified. Defendants were in exclusive control of the material facts, and such facts were not known to the public, Plaintiff, or Class Members.

108. Because of the concealment and/or suppression of the facts, Plaintiff and Class Members have sustained damages because they own vehicles that are diminished in value as a result of Defendants’ concealment of the true quality and quantity of those vehicles’ emissions and Defendants’ failure to timely disclose the actual emissions qualities and quantities of hundreds of thousands of Porsche-branded vehicles and the serious issues engendered by Defendants’ corporate policies. Had Plaintiff and Class Members been aware of Defendants’ emissions deceptions with regard to the vehicles at issue, and the company’s callous

disregard for compliance with applicable federal and state law and regulations, Plaintiff and Class Members who purchased or leased new or certified previously owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

109. The value of Plaintiff's and Class Members' vehicles has diminished or will diminish as a result of Defendants' fraudulent concealment of their emissions deception, which has greatly tarnished the Porsche brand name attached to Plaintiff's and Class Members' vehicles and made any reasonable consumer reluctant to purchase any of the Defeat Device Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

110. Accordingly, Defendants are liable to Plaintiff and Class Members for damages in an amount to be proven at trial.

111. Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Class Members' rights and the representations that Defendants made to them, in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

112. Plaintiff pleads this count pursuant to the laws of Georgia, where Defendants have significant operations, on behalf of all members of the Class. As necessary, and in the alternative, Plaintiff may allege sub-classes, based on the residences at pertinent times of members of the Class, to allege fraudulent concealment under the laws of states other than Georgia.

COUNT II

BREACH OF CONTRACT

113. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

114. Plaintiff brings this claim on behalf of himself and the Class.

115. Defendants' misrepresentations and omissions alleged herein, including their failure to disclose the existence of the "defeat device" and/or defective design as alleged herein, caused Plaintiff and the other Class Members to make their purchases or leases of their Defeat Device Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Class Members would not have purchased or leased these Defeat Device Vehicles, would not have purchased or leased these Defeat Device Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the CleanDiesel engine system and the "defeat device." Accordingly, Plaintiff and the

other Class Members overpaid for their Defeat Device Vehicles and did not receive the benefit of their bargain.

116. Each and every sale or lease of a Defeat Device Vehicle constitutes a contract between Defendants and the purchaser or lessee. Defendants breached these contracts by selling or leasing Plaintiff and the other Class Members defective Defeat Device Vehicles and by misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design, including information known to Defendants rendering each Defeat Device Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and “defeat devices.”

117. As a direct and proximate result of Defendants’ breach of contract, Plaintiff and the Class 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 III

BREACH OF EXPRESS WARRANTY

118. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

119. Plaintiff brings this claim on behalf of himself and the Class.

120. Defendants made numerous representations, descriptions, and promises to Plaintiff and Class Members regarding the performance and emission controls of its diesel vehicles.

121. For example, Defendants included in manuals for some or all of their Defeat Device Vehicles the warranty that its vehicles 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,” or similar language.

122. Defendants made similar representations that their emissions systems complied with state law.

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

124. Plaintiff and Class Members reasonably relied on Defendants’ representations in purchasing “clean” diesel vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiff, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, Defendants breached their

express warranty by providing a product containing defects that were never disclosed to Plaintiff and Class Members.

125. As a direct and proximate result of Defendants' false and misleading representations and warranties, Plaintiff and Class Members suffered significant damages and seek the relief described below.

COUNT IV

BREACH OF IMPLIED WARRANTY

126. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

127. Plaintiff brings this claim on behalf of himself and the Class.

128. Defendants made numerous representations, descriptions, and promises to Plaintiff and Class Members regarding the functionality of Defendants' "clean" diesel technology.

129. Plaintiff and Class Members reasonably relied on Defendants' representations in purchasing the Defeat Device Vehicles.

130. As set forth throughout this Complaint, Defendants knew their representations, descriptions and promises regarding their diesel engines were false.

131. When Plaintiff and Class Members purchased Defendants' diesel vehicles, they did not conform to the promises or affirmations of fact made in Defendants' promotional materials, including that the vehicles were designed to meet the most demanding environmental standards. Instead, as alleged above, those vehicles were designed to cheat those standards, and the vehicles emitted far higher levels of pollution than promised.

132. The Defeat Device Vehicles thus failed to conform to Defendants' implied warranty regarding their functionality.

133. As a direct and proximate result of Defendants' false and misleading representations and warranties, Plaintiff and Class Members suffered significant injury when Defendants sold them cars that, it is now clear, are worth far less than the price Plaintiff and Class Members paid for them. Accordingly, Plaintiff and the Class seek the relief described below.

COUNT V

IMPLIED AND WRITTEN WARRANTY (Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.)

134. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

135. Plaintiff brings this claim on behalf of himself and the Class.

136. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 15 U.S.C. § 2310(d).

137. Defendants' Defeat Device Vehicles are a "consumer product," as that term is defined in 15 U.S.C. § 2301(1).

138. Plaintiff and Class Members are "consumers," as that term is defined in 15 U.S.C. § 2301(3).

139. Defendants are "warrantors" and "suppliers" as those terms are defined in 15 U.S.C. § 2301(4) and (5).

140. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with an implied or written warranty.

141. As described herein, Defendants provided Plaintiff and Class Members with "implied warranties" and "written warranties" as those term are defined in 15 U.S.C. § 2301.

142. Defendants have breached these warranties as described in more detail above. Without limitation, Defendants' Defeat Device vehicles are defective, as described above, which resulted in the problems and failures also described above.

143. By Defendants' conduct as described herein, including their knowledge of the defects inherent in the vehicles and their action, and inaction, in

the face of the knowledge, Defendants have failed to comply with their obligations under their written and implied promises, warranties, and representations.

144. In their capacity as a warrantor, and by the conduct described herein, any attempts by Defendants to limit the implied warranties in a manner that would exclude coverage of the defective software and systems is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective the software and supporting systems is null and void.

145. All jurisdictional prerequisites have been satisfied.

146. Plaintiff and members of the Class are in privity with Defendants in that they purchased the software from Defendants or their agents.

147. As a result of Defendants' breach of warranties, Plaintiff and Class Members are entitled to revoke their acceptance of the vehicles, obtain damages and equitable relief, and obtain costs pursuant to 15 U.S.C. § 2310.

COUNT VI

UNJUST ENRICHMENT

148. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

149. Plaintiff brings this claim on behalf of himself and the Class.

150. Plaintiff and members of the Class conferred a benefit on Defendants by, *inter alia*, using and paying a premium for Defendants' vehicles.

151. Defendants have retained this benefit, and know of and appreciate this benefit.

152. Defendants were and continue to be unjustly enriched at the expense of Plaintiff and Class Members.

153. Defendants should be required to disgorge this unjust enrichment.

COUNT VII

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (O.C.G.A. § 11-2-314)

154. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

155. Plaintiff brings this claim on behalf of himself and the Class.

156. Defendants are and were at all relevant times a "merchant" with respect to motor vehicles for purposes of O.C.G.A. § 11-2-314.

157. A warranty that the Defeat Device Vehicles were merchantable was implied by law in the subject sale and/or lease transactions, as set forth in O.C.G.A. § 11-2-314.

158. The subject Defeat Device Vehicles, when sold and at all times thereafter, were not fit for the ordinary purpose for which cars are used, in violation of O.C.G.A. § 11-2-314(2)(c).

159. Specifically, the Defeat Device Vehicles are inherently defective in that they do not comply with federal and state emissions standards, rendering certain safety and emissions functions inoperative, and the CleanDiesel engine system was not adequately designed, manufactured, and tested.

160. The subject Defeat Device Vehicles, when sold and at all times thereafter, did not conform to the promises or affirmations of fact made in the associated documentation, in violation of O.C.G.A. § 11-2-314(2)(f).

161. Plaintiff and Class Members have had sufficient direct dealings with Defendants or their agents (dealerships) to establish privity of contract between Defendants on one hand and Plaintiff and Class Members on the other. Notwithstanding this, privity is not required in this case because Plaintiff and 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 Defeat Device Vehicles and have no rights under the warranty agreements provided with the Defeat Device 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 Class Members' Defeat Device Vehicles are dangerous instrumentalities due to the aforementioned defects and nonconformities.

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

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully prays for the following relief:

- (a) Entry of judgment in their favor and against Defendants;
- (b) Certification of the proposed Class and appointment of Plaintiff's counsel as Class Counsel;
- (c) Costs, restitution, damages, and disgorgement in an amount to be determined at trial;
- (d) Revocation of acceptance;
- (e) Damages under the Magnuson-Moss Warranty Act;
- (f) All applicable civil penalties, treble damages, and/or punitive damages as permitted by law;

- (g) Pre- and post-judgment interest on any amounts awarded, as permitted by law;
- (h) All costs, expenses, and attorneys' fees associated with the prosecution of this action;
- (i) A **TRIAL BY JURY**; and
- (j) Such other and further relief as this Court deems just and appropriate.

Respectfully submitted this 5th day of November, 2015.

HARRIS PENN LOWRY LLP

/s/ Stephen G. Lowry
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Attorneys for Plaintiffs

CERTIFICATION OF COMPLIANCE

Pursuant to the Local Rules of the Northern District of Georgia, the above-signed counsel certifies that the foregoing document complies with all formatting requirements of Local Rule 5.1 and further certifies that this document was prepared in 14-point Times New Roman font.



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

NOV - 2 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Volkswagen AG
Audi AG
Porsche AG
Volkswagen Group of America, Inc.
Porsche Cars North America, Inc.
Thru:

David Geanacopoulos
Executive Vice President Public Affairs and
General Counsel
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Joseph Folz
Vice President, General Counsel and
Secretary
Porsche Cars North America, Inc.
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3800 Hamlin Road
Auburn Hills, MI 48326

Walter J. Lewis
Manager, Regulatory Affairs
Porsche Cars North America, Inc.
980 Hammond Drive, Suite 1000
Atlanta, GA 30328

Re: Notice of Violation

Dear Mr. Geanacopoulos, Mr. Johnson, Mr. Folz, and Mr. Lewis:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Volkswagen AG, Audi AG, Porsche AG, Volkswagen Group of America, Inc., and Porsche Cars North America, Inc., (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 2014 – 2016 diesel light-duty vehicles equipped with 3.0 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, COCs 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 AECs 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 each vehicle that causes the vehicle to perform differently when the vehicle is being tested for compliance with EPA emission standards than in normal operation and use.

When this software determines the vehicle has begun the FTP 75 Federal emission test procedure, it directs the vehicle to employ a low NO_x temperature conditioning mode. A status bit in the software indicates that a “temperature conditioning” mode is active. In this low NO_x temperature conditioning mode, the vehicle operates under a number of emission control parameters, including injection timing, exhaust gas recirculation rate, and common rail fuel pressure in such a way that the parameters yield low engine-out NO_x emissions and high exhaust temperatures. The high exhaust temperatures heat the selective catalytic reduction system (“catalyst”) and improve the catalyst’s ability to reduce tailpipe NO_x emissions. In this low NO_x temperature conditioning mode, the combination of low engine-out NO_x and improved catalyst performance results in tailpipe NO_x emissions that are below the applicable emissions standard.

However, the software employs a “timer” that coincides with the low NO_x temperature conditioning mode. At exactly one second after the completion of the initial phases of the FTP 75 Federal emissions test procedure (1,370 seconds, which is when the vehicle would normally be turned off), this software directs the vehicle to cease low NO_x temperature conditioning mode. The “temperature conditioning” status bit switches to zero, and a second status bit indicates the activation of “transition to normal mode.” In this “normal mode,” the emission control system is immediately less effective. Compared to the low NO_x temperature conditioning mode, the vehicle employs a different injection timing, exhaust gas recirculation rate, and common rail fuel pressure. This yields higher levels of NO_x from the engine and reduced exhaust temperatures.

In addition, when the vehicle starts under conditions that the software determines *are not* the beginning of the FTP 75 Federal emission test procedure, the vehicle does not use the low NO_x temperature conditioning mode at all. Instead, the emission control parameters are set consistent with the “normal mode.”

In sum, as soon as the vehicle senses that it is not being tested, it uses “normal mode.” In “normal mode,” tailpipe emissions of NO_x are up to 9 times the applicable NO_x standard levels, depending on model type and type of drive cycle (e.g., city, highway).

This NOV is based on vehicle emission testing performed by the EPA’s National Vehicle and Fuel Emissions Laboratory, California Air Resources Board’s Hagen-Smit Laboratory, and Environment Canada’s River Road Laboratory. This testing was performed since EPA’s announcement on September 25, 2015, that it would perform additional testing “using driving cycles and conditions that may reasonably be expected to be encountered in normal operation

and use, for the purposes of investigating a potential defeat device.” EPA, *EPA Conducted Confirmatory Testing* (Sept. 25, 2015).

VW knew or should have known that the software described above bypasses, defeats, or renders 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 federal test procedures and cause emission control systems to underperform when the software determined that the vehicle was not being tested.

VW’s software described above includes one or more AECs 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 new motor vehicles within these test groups. Additionally, VW 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 software described above.

The vehicles are identified by the table below. All vehicles are equipped with 3.0 liter diesel engines.

Model Year	EPA Test Group	Make and Model(s)
2014	EADXT03.02UG	VW Touareg
2015	FPRXT03.0CDD	Porsche Cayenne
2016	GVGAJ03.0NU4	Audi A6 Quattro, A7 Quattro, A8, A8L, and Q5

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; 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. 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).

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,



Susan Shinkman
Director
Office of Civil Enforcement

Copy:

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



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

Edmund G. Brown Jr.
Governor

November 2, 2015

Reference No. IUC-2015-011

Volkswagen AG
Audi AG
Porsche AG
Porsche Cars North America
Volkswagen Group of America, Incorporated

Through:

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

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

Mr. Walter J. Lewis
Manager, Regulatory Affairs
Porsche Cars North America, Incorporated
980 Hammond Drive, Suite 1000
Atlanta, Georgia 30328

Subject: Defeat Device Screening Volkswagen Group of America, Inc. (VW) 2016
Test Group GVGAJ03.0NU4 and 2014 Audi Test Group EADX03.02UG

Dear Mr. Geanacopoulos, Mr. Johnson, and Mr. Lewis:

As described in the Air Resources Board (ARB) letter to all manufacturers dated September 25, 2015, (Reference No. IUC 2015-008), all light- and medium-duty vehicles are being assessed for non-approved auxiliary emission control devices

*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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(AECD) and/or defeat devices with a new screening testing approach in addition to the standard

certification emissions test cycles. ARB was and remains particularly interested in conducting this assessment on VW's 3.0 liter diesel vehicles given your admission of a defeat device on 2009-2016 model year 2.0 liter diesel vehicles. This admission was made to ARB and the U.S. Environmental Protection Agency (U.S. EPA) staff on September 3, 2015, and during a U.S. Congressional Hearing on October 8, 2015.

The purpose of this letter is to inform VW that ARB has conducted defeat device screening and certification testing on an Audi A6 Model of the 2016 Test Group GVGAJ03.0NU4 and a 2014 Volkswagen Touareg model of Audi Test Group EADXT03.02UG. ARB tested these two models using non-traditional defeat device screening cycles and it shows that both these Test Groups are demonstrating the same type of emissions behaviors as those in which VW has admitted defeat devices exist. The Touareg has also failed a Federal Test Procedure certification test for oxides of nitrogen. These activities corroborate testing conducted by U.S. EPA and Environment Canada on a 2014 VW Touareg (Test Group EADXT03.02UG) and a 2015 Porsche Cayenne (Test Group FPRXT03.0CDD), respectively. This testing has also yielded evidence of a defeat device. If this issue exists across all 2014-2016 test groups represented by these vehicles, approximately 1600 vehicles could be impacted in California.

ARB is very disappointed with this development as VW (along with all the other manufacturers) was alerted on September 25, 2015, (ARB's Letter Reference No. IUC-2015-008) that ARB would be immediately conducting defeat device testing. As you are well aware, a defeat device was neither described nor justified in the certification applications for the 3.0 liter diesel test groups submitted to U.S. EPA and ARB. Therefore, each vehicle so equipped would not be covered by a valid Certificate of Conformity or Executive Order and would be in violation of federal and state law.

VW must immediately initiate discussions with ARB to discuss the testing results that appear to confirm the presence of a defeat device in the GVGAJ03.0NU4, EADXT03.02UG and FPRXT03.0CDD Test Groups and the implications on other 3.0 liter diesel product lines. VW must ensure that the appropriate Audi and Porsche AG management and engineering staff are made available for these discussions. VW must contact ARB within 72 hours of receipt of this letter to arrange an initial meeting to discuss the data results. VW will be expected to take the appropriate corrective action to rectify the emissions non-compliance and return these vehicles to the claimed certified configuration. ARB program and enforcement staff is prepared to work closely with VW to find corrective actions to bring these vehicles into compliance.

Mr. Geanacopoulos, Mr. Johnson, and Mr. Lewis

November 2, 2015

Page 3

Finally, I note that the screening and testing of additional 3.0 liter and other test groups to confirm the nature and scope of defeat devices continues requiring ARB to commit and expend substantial resources. Therefore, any information VW can provide ARB – before, during, or after the aforementioned initial meeting – that serves to reduce those resources will be considered in resolving any future associated ARB enforcement action.

Please contact me at (626)-450-6150 to discuss arranging the requested meeting.

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

Todd Sax, Chief
Enforcement Division
California Air Resources Board

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

HARRY BROWN, JR., individually and on behalf of all others similarly situated

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Chatham (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT(S)

PORSCHE CARS NORTH AMERICA, INC., PORSCHE AG, 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

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Stephen G. Lowry, Jeffrey R. Harris, Darren W. Penn, Jed D. Manton, Madeline E. McNeeley, Kristy S. Davies Harris Penn Lowry LLP 1201 Peachtree St. NE, Suite 900 Atlanta, GA 30361 404-961-7650 steve@hpllegal.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF, 2 U.S. GOVERNMENT DEFENDANT, 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY), 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- CITIZEN OF THIS STATE, CITIZEN OF ANOTHER STATE, CITIZEN OR SUBJECT OF A FOREIGN COUNTRY, INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE, INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING, 2 REMOVED FROM STATE COURT, 3 REMANDED FROM APPELLATE COURT, 4 REINSTATED OR REOPENED, 5 ANOTHER DISTRICT (Specify District), 6 MULTIDISTRICT LITIGATION, 7 FROM MAGISTRATE JUDGE JUDGMENT, APPEAL TO DISTRICT JUDGE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Class Action Fairness Act, 28 U.S.C. § 1332(d) Fraudulent concealment of product defect; breach of contract and warranties

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties. 2. Unusually large number of claims or defenses. 3. Factual issues are exceptionally complex. 4. Greater than normal volume of evidence. 5. Extended discovery period is needed. 6. Problems locating or preserving evidence. 7. Pending parallel investigations or actions by government. 8. Multiple use of experts. 9. Need for discovery outside United States boundaries. 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT \$, APPLYING IFP, MAG. JUDGE (IFP), JUDGE, MAG. JUDGE (Referral), NATURE OF SUIT, CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
120 MARINE
130 MILLER ACT
140 NEGOTIABLE INSTRUMENT
151 MEDICARE ACT
160 STOCKHOLDERS' SUITS
190 OTHER CONTRACT
195 CONTRACT PRODUCT LIABILITY
196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
220 FORECLOSURE
230 RENT LEASE & EJECTMENT
240 TORTS TO LAND
245 TORT PRODUCT LIABILITY
290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
315 AIRPLANE PRODUCT LIABILITY
320 ASSAULT, LIBEL & SLANDER
330 FEDERAL EMPLOYERS' LIABILITY
340 MARINE
345 MARINE PRODUCT LIABILITY
350 MOTOR VEHICLE
355 MOTOR VEHICLE PRODUCT LIABILITY
360 OTHER PERSONAL INJURY
362 PERSONAL INJURY - MEDICAL MALPRACTICE
365 PERSONAL INJURY - PRODUCT LIABILITY
367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
371 TRUTH IN LENDING
380 OTHER PERSONAL PROPERTY DAMAGE
385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
442 EMPLOYMENT
443 HOUSING/ ACCOMMODATIONS
444 WELFARE
440 OTHER CIVIL RIGHTS
445 AMERICANS with DISABILITIES - Employment
446 AMERICANS with DISABILITIES - Other
448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
510 MOTIONS TO VACATE SENTENCE
530 HABEAS CORPUS
535 HABEAS CORPUS DEATH PENALTY
540 MANDAMUS & OTHER
550 CIVIL RIGHTS - Filed Pro se
555 PRISON CONDITION(S) - Filed Pro se
560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
720 LABOR/MGMT. RELATIONS
740 RAILWAY LABOR ACT
751 FAMILY and MEDICAL LEAVE ACT
790 OTHER LABOR LITIGATION
791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
862 BLACK LUNG (923)
863 DIWC (405(g))
863 DIWW (405(g))
864 SSID TITLE XVI
865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
400 STATE REAPPORTIONMENT
430 BANKS AND BANKING
450 COMMERCE/ICC RATES/ETC.
460 DEPORTATION
470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
480 CONSUMER CREDIT
490 CABLE/SATELLITE TV
891 AGRICULTURAL ACTS
893 ENVIRONMENTAL MATTERS
895 FREEDOM OF INFORMATION ACT
950 CONSTITUTIONALITY OF STATE STATUTES
890 OTHER STATUTORY ACTIONS
899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ monetary damages

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE DOCKET NO.

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO., WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Stephen G. Lowry

11/5/2015

SIGNATURE OF ATTORNEY OF RECORD

DATE