

FILED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

2015 OCT -7 P 4:43

CLERK OF DISTRICT COURT  
ALEXANDRIA, VIRGINIA

MARK FIDDLER, individually and )  
on behalf of all others similarly situated, )  
) )  
and ) )  
) )  
CHINA TERRELL, individually and )  
on behalf of all others similarly situated, )  
) )  
Plaintiff, )  
) )  
v. ) )  
) )  
VOLKSWAGEN GROUP OF AMERICA, INC., )  
) )  
AUDI OF AMERICA, INC. )  
) )  
VOLKSWAGEN AG, )  
) )  
and ) )  
) )  
AUDI AG, )  
) )  
Defendants. )

Civil Action No. 1:15CV1308-LO-MSN

**CLASS ACTION COMPLAINT**

Plaintiffs Mark Fiddler and China Terrell, for themselves and all similarly situated people, bring this action against Volkswagen Group of America, Inc., Volkswagen AG, Audi AG, and Audi of America, Inc. and allege the following:

**INTRODUCTION**

1. Volkswagen Group of America, Inc. is a subsidiary of Volkswagen AG. Audi AG is a majority-owned subsidiary (99.5%) of Volkswagen AG. Audi of America, Inc. is an operating unit of Volkswagen Group of America, Inc. (collectively, these four defendants are

referred to herein as “Volkswagen” or “Defendants”). From at least 2009 to the present, Volkswagen Group of America, Inc. and Audi of America, Inc. have manufactured and sold cars in the United States. Several models manufactured and sold in the U.S., including VW Jetta, the VW Beetle, the Audi A3, the VW Golf, and the VW Passat, have diesel engines.

2. Volkswagen marketed diesel engines in these model cars as “TDI clean diesel engine,” “turbo charged diesel injection,” or simply “TDI.” Volkswagen marketed these vehicles as environmentally-friendly cars that were extremely fuel-efficient and high-performance, with very low emissions. After being confronted by the EPA and private entities, however, Volkswagen has recently disclosed, however, that it did not make the cars with those desirable attributes. Rather, Volkswagen manufactured and sold automobiles that emitted up to 40 times the pollutants that it claimed the TDI clean diesel vehicles were emitting. Consumers, including Plaintiffs Mark Fiddler and China Terrell, relied on Volkswagen’s false representations in deciding whether to purchase a diesel engine vehicle—and, more specifically, whether to purchase a “TDI” vehicle.

3. Rather than manufacturing these vehicles with extremely high gas mileage and low emissions as promised, Volkswagen devised a way to make its cars merely *appear* to function as advertised. Volkswagen installed “defeat devices” on various makes and models branded as “TDI clean diesel,” which disabled the emissions control system when the automobile was operated normally on roads and highways.

4. The technology designed to control emissions in these vehicles, to meet state and federal emissions regulations, works by reducing the vehicle’s performance, limiting acceleration, torque, and fuel efficiency. To hide that the emissions control systems decrease performance, Volkswagen designed a “defeat device” and installed the device on its vehicles.

The “defeat devices” switched on the full emissions control system in the vehicle *only* when the software detected that the car was undergoing emissions testing. When the vehicle was not being emissions tested, the emissions control system automatically switched off. As a result, Volkswagen’s vehicles produced as much as 40 times more pollution than allowed under the Clean Air Act and state law.

5. According to a Notice of Violation issued by the U.S. Environmental Protection Agency (“EPA”), Volkswagen installed this “defeat device” on at least the following diesel models of its vehicles: Model Year 2009-2015 VW Jetta, Model Year 2009-2015 VW Beetle, Model Year 2009-2015 VW Golf, Model Year 2009-2015 VW Passat, and Model Year 2009-2015 Audi A3. According to published reports, as many as 482,000 of these Volkswagen automobiles were sold in the United States, and as many as 11,000,000 worldwide. Investigations are ongoing, and additional models and model years may be added to this list as new facts are discovered.

### **PARTIES**

6. Plaintiff Mark Fiddler is a resident and citizen of Minnesota, and the United States.

7. Plaintiff China Terrell is a resident and citizen of Massachusetts, and the United States.

8. Volkswagen Group of America, Inc. is a corporation doing business in every U.S. state and the District of Columbia. While Volkswagen is organized under New Jersey law, its principal place of business is 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. Volkswagen is therefore a citizen of Virginia. *See* 28 U.S.C. § 1332(d)(10). Volkswagen Group of America, Inc. has an operating unit that does business as “Audi of America, Inc.,” the

principal place of business for which is also 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171.

9. Defendant Volkswagen AG is a foreign corporation. Its principal place of business is at 38436 Wolfsburg, Germany. Volkswagen Group of America, Inc. is a subsidiary of Volkswagen AG.

10. Defendant Audi AG is a foreign corporation. Its principal place of business is at Auto-Union-Str. 1 Ingolstadt, Bayern, 85057 Germany.

11. At all relevant times, Volkswagen manufactured, distributed, sold, leased, and warranted the vehicles under the Volkswagen and Audi brand names throughout the United States. Volkswagen or its agents designed the clean diesel engines and engine-control systems in the vehicles, including the “defeat device.” Volkswagen also developed and disseminated the owners’ manuals, warranty booklets, and other promotional materials relating to the vehicles.

#### **TOLLING**

12. For the following reasons, any otherwise applicable statutes of limitations have been tolled by the discovery rule with respect to all claims.

13. Through the exercise of reasonable diligence, and within any applicable statutes of limitation, Plaintiffs Fiddler and Terrell and members of the proposed class could not have discovered that Volkswagen was concealing and misrepresenting the true emissions levels of its vehicles, including but not limited to its use of “defeat devices.”

14. Volkswagen’s deception with respect to its “TDI clean diesel” engine-control systems and “defeat devices” was concealed from both consumers and regulators. As reported in the *New York Times* on September 19, 2015, the International Council on Clean Transportation, a research group, 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 this issue to the attention of the EPA. The EPA then conducted further tests on the vehicles, and ultimately uncovered the unlawful use of the “defeat device” software.

15. Plaintiffs and other class members could not have reasonably discovered, and did not know of facts that would have caused a reasonable person to suspect, that Volkswagen intentionally concealed this information from federal and state authorities, its own dealers, and its customers. Additionally, a reasonable and diligent investigation could not have revealed Volkswagen’s deception, which was discovered by Plaintiffs Fiddler and Terrell immediately before this action was filed.

16. Plaintiffs’ claims are also tolled due to Volkswagen’s fraudulent concealment.

17. Instead of disclosing its deception, Volkswagen falsely represented that its vehicles complied with federal and state emissions standards, and that it was a reputable manufacturer whose representations could be trusted. Volkswagen knowingly, actively, and fraudulently concealed and denied the facts alleged in this Complaint.

18. Plaintiffs’ claims are also tolled by the doctrine of estoppel.

19. Volkswagen was under a continuous duty to disclose to Plaintiffs and the other class members the facts that it knew about the “defeat devices,” vehicle emissions, and the vehicles’ failure to comply with federal and state laws.

20. Although Volkswagen had a duty throughout the relevant time period to disclose to Plaintiffs and class members that it had engaged in the deception described in this complaint, Volkswagen chose to evade federal and state emissions and clean air standards with respect to the vehicles. Volkswagen also intentionally misrepresented its blatant lack of compliance with

state law regulating vehicle emissions and clean air. Thus, Volkswagen is estopped from relying on any statutes of limitations in defense of this action.

### **JURISDICTION**

21. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). At least one class member (both Plaintiffs Fiddler and Terrell) is of diverse citizenship from Defendants, there are more than 100 class members, and the aggregate amount in controversy exceeds \$5 million, before interest and costs.

22. The Court also has personal jurisdiction over Defendants under 18 U.S.C. § 1965 because they are found or have agents or transact business in this District.

23. The court also has jurisdiction pursuant to 28 U.S.C. §1331 upon 18 U.S.C. § 1964.

24. The court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

25. This Court may exercise personal jurisdiction over Volkswagen because Volkswagen has sufficient minimum contacts in Virginia and purposefully avails itself of the markets in Virginia by establishing and maintaining a principal place of business here, as well as through the advertising, marketing, sale, and distribution of its vehicles to and through this forum.

26. Venue is proper in this district and division under 28 U.S.C. § 1391(b) because Volkswagen is at home in this jurisdiction, this is its principal place of business, decisions and conduct material to liability took place here and Defendants have thereby caused harm to class members residing in this venue.

### **FACTS**

27. Volkswagen intentionally designed, marketed, and sold cars that misled consumers and regulators about the amount of pollution its cars created and their fuel efficiency. While touting itself as an environmentally-conscious company that produced cars for people who care about the environment, Volkswagen sold expensive cars that produced pollution at many times the level allowed by federal and state regulations. Volkswagen then intentionally and knowingly concealed the truth about those cars from regulators and consumers.

**A. Volkswagen touted its “TDI clean diesel vehicles” as fuel-efficient and environmentally-friendly**

28. For years, Volkswagen has advertised its diesel vehicles as low-emission, fuel-efficient cars. This marketing message is at the core of its image in the United States. This marketing campaign has been extremely successful—Volkswagen has become the largest seller of diesel passenger vehicles in the United States.

29. Volkswagen’s success in selling its diesel vehicles is based in large part on promoting these vehicles as “clean” and “green.” Each of these vehicles includes the phrase “Clean Diesel” in its name.

30. In promoting its “green” image, Volkswagen advertises the fact that the Audi A3 TDI and VW Jetta were named the 2010 Green Car of the Year and the 2009 Green Car of the Year, respectively.

31. In addition to its advertising, Volkswagen created a website to promote its “clean” diesel technology, [www.clearlybetterdiesel.org](http://www.clearlybetterdiesel.org). On this website, Volkswagen claims that its clean-diesel technology “meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner.”

**B. Volkswagen intentionally hid the excessive and illegal levels of pollution emitted from its cars**

32. Contrary to Volkswagen's self-promotion as a "green" car company, its diesel cars emitted unlawful levels of pollutants. These vehicles are far from environmentally-friendly.

33. On September 18, 2015, the EPA issued a Notice of Violation ("Notice") to Volkswagen. (Exhibit A) This Notice explains that Volkswagen has manufactured and installed software in the Volkswagen and Audi vehicles sold by Volkswagen in the United States that sensed when the vehicle was being tested for EPA emission compliance.

34. This software is defined by the Clean Air Act as a "defeat device."

35. The "defeat device" software senses whether the vehicle is being tested based on several inputs, including the steering wheel position, vehicle speed, duration of operation, and barometric pressure. When these inputs register at the levels or positions used for EPA emissions testing, the vehicle's software runs the emissions control systems to produce emissions results that meet EPA standards. At any other time, when the vehicle is not being tested, the software runs a different system that reduces and "defeats" the effectiveness of the emission control system.

36. This software allows Volkswagen's diesel vehicles appear to meet emissions standards in labs or in state testing stations, while permitting the vehicles to emit nitrogen oxides at up to 40 times the levels permitted by the EPA during normal operation.

37. The Clean Air Act has strict emissions standards for vehicles. It requires vehicle manufacturers to certify to the EPA that vehicles sold in the U.S. meet the federal emissions standards to control air pollution. Every vehicle sold in the U.S. must be covered by an EPA certificate of conformity. Under federal law, cars equipped with "defeat devices" reducing the effectiveness of emissions control systems during normal driving conditions cannot be certified. By manufacturing and selling cars with "defeat devices" that allowed higher emissions levels

than it certified to the EPA, Volkswagen violated the Clean Air Act, defrauded its consumers, and engaged in unfair competition under state and federal law.

**C. Volkswagen has profited from its diesel vehicles**

38. Volkswagen charged substantial premiums for its “clean diesel” vehicles. For example, the 2016 Volkswagen Jetta base S model with a gasoline engine has a starting MSRP of \$18,780, but the base model TDI Clean Diesel Jetta has a starting price of \$21,640—a price premium of \$2,860, roughly 15%.

39. The table below shows the prices for the premium charged for each base, mid-level, and top-line trim for each affected model:

**TDI Clean Diesel Price Premiums**

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

40. Volkswagen charged these price premiums for all of the vehicles containing “defeat devices.” By charging these fraudulent price premiums, Volkswagen was unjustly enriched.

**D. Volkswagen's illegal actions have caused class members significant harm**

41. The EPA has ordered Volkswagen to recall the vehicles with "defeat devices" installed and to repair them so that they comply with EPA emissions requirements at all times. Nonetheless, purchasers of these vehicles have and will continue to suffer significant harm.

42. First, Volkswagen will not be able to make the vehicles comply with emissions standards without substantially degrading their performance characteristics, including their horsepower and their efficiency. Presumably, if Volkswagen could have accomplished the advertised combination of engineering ability, it would have done so without engaging in the massive fraudulent scheme that has now been exposed. As a result, even if Volkswagen is able to make class members' vehicles EPA-compliant, class members will nonetheless suffer actual harm and damages because their vehicles will no longer perform as they did when purchased and as advertised.

43. Second, Volkswagen's deception and the subsequent recall repairs will diminish the value of every vehicle with "defeat device." Class members overpaid for cars now worth substantially less. If Volkswagen is able to remedy the emissions, problem class members will also end up paying more to fuel their less-efficient vehicles over the years that they own the vehicle.

44. Had Plaintiffs Fiddler and Terrell and the other class members known of the "defeat device" at the time they purchased or leased their vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did.

45. Moreover, when and if Volkswagen recalls the vehicles and degrades the Clean Diesel engine performance in order to make the vehicles compliant with EPA standards,

Plaintiffs Fiddler and Terrell and the other class members will be required to spend more on fuel and will not benefit from the performance qualities of their vehicles as advertised.

46. As a result of Volkswagen's unfair, deceptive, and fraudulent business practices, and its failure to disclose that the vehicles emit up to 40 times the allowable emissions levels under normal operating conditions, owners and lessees of the vehicles have suffered losses in money and property. Vehicles will necessarily be worth less in the used marketplace because of their decrease in performance and efficiency, which means that owners of these vehicles will not be able to recover nearly as much value in the future.

47. According to media sources, Martin Winterkorn, the recently resigned chairman of Volkswagen AG (parent of Defendant Volkswagen), said in a statement that he was "deeply sorry that we have broken the trust of our customers and the public," and that Volkswagen would be suspending sales of some 2015 and 2016 models with 2.0 liter diesel engines. On October 5, 2015 the Wall Street Journal reported that Michael Horn, head of Volkswagen America, told dealers at a meeting in New York City, "Our company was dishonest with the EPA, and the California Air Resources Board, and with all of you. We've totally screwed up."

**E. Plaintiffs Mark Fiddler and China Terrell and all other similarly situated persons have been damaged and will continue to be damaged by Volkswagen's conduct**

48. Plaintiff Mark Fiddler, a citizen of Minnesota, purchased a 2010 VW Jetta Sportwagon TDI in St. Louis Park, Minnesota, on September 14, 2011 for \$31,613.71.

49. Fiddler and his wife liked the 2010 VW Jetta Sportwagon TDI because of its "green" technology and fuel efficiency. On November 5, 2011, Fiddler purchased a 2012 VW Golf TDI in St. Louis Park, Minnesota, for \$26,000.

50. In response to solicitations by Volkswagen sales representatives, on April 30, 2014, Fiddler traded in his 2010 VW Jetta Sportwagon TDI and his 2012 VW Golf TDI and applied this trade-in credit to two new Volkswagen “TDI clean diesel” vehicles. He purchased a 2014 VW Jetta Sportwagon for \$28,475 and a 2014 VW Golf TDI for \$27,085 in St. Louis Park, Minnesota.

51. Fiddler and his wife still own the 2014 VW Jetta Sportwagon TDI and the 2014 VW Golf TDI today.

52. Because of the recall, Fiddler’s 2014 VW Jetta Sportwagon TDI and 2014 VW Golf TDI will have decreased performance, decreased gas mileage, and increased fuel costs over its life. Their resale value will also be reduced, even if the defect is corrected.

53. Plaintiff China Terrell, a citizen of Boston, Massachusetts, purchased a certified pre-owned 2010 Volkswagen Jetta TDI in Springfield, Virginia on August 20, 2014 for \$16,581.

54. Terrell still owns the 2010 Volkswagen Jetta TDI today.

55. Because of the recall, Terrell’s 2010 Volkswagen Jetta TDI will have decreased performance, decreased gas mileage, and increased fuel costs over its life. Its’ resale value will also be reduced, even if the defect is corrected.

### **CLASS ACTION ALLEGATIONS**

56. Plaintiffs Fiddler and Terrell bring this action on behalf of themselves and as a class action under Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), on behalf of the following class:

All persons or entities in the United States who purchased or leased a vehicle containing a “TDI clean diesel engine.” These vehicles include, but are not necessarily limited to, Model Years 2009-2015 VW Jetta, Model Years 2009-2015 VW Beetle, Model Years 2009-2015 VW Golf, Model Years 2009-2015 VW Passat, and Model Years 2009-2015 Audi A3.

Excluded from the class are individuals who have personal-injury claims resulting from the “defeat device” in the Clean Diesel system. Also excluded from the class are the Volkswagen Defendants, its subsidiaries, affiliates, employees, legal representatives, and officers; all persons who make a timely election to be excluded from the (b)(3) class; governmental entities; any District, Magistrate or Appellate judge to whom this case is assigned and his/her immediate family and judicial staff; and any attorney representing Plaintiffs in this action. Plaintiffs reserve the right to revise the class definition based upon information learned through discovery.

### **Class Certification Requirements**

57. *Numerosity: Federal Rule of Civil Procedure 23(a)(1)*. The members of this class are so numerous and geographically dispersed that individual joinder of all class members is impracticable. Approximately half a million affected vehicles were sold in the U.S. between 2009 and 2015. The precise number of class members can only be ascertained through discovery, but the number is great enough that joinder is impracticable. On information and belief, hundreds of thousands of class members exist. The court and all parties will benefit substantially from a single lawsuit that addresses all of the class members’ claims in this case. Class members will be readily identifiable from information and records in Volkswagen’s possession, custody, or control, or easily obtainable from third parties. Class members may be notified of this action by recognized, court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

58. *Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)*. Common questions of law and fact in this case predominate over any questions affecting individual class members. Common factual and legal questions include, but are not limited to:

- (a) whether Volkswagen engaged in the conduct alleged herein;
- (b) whether Volkswagen designed, advertised, marketed, distributed, leased, sold, or otherwise placed vehicles with “defeat devices” into the stream of commerce in the United States;
- (c) whether the affected vehicles contain a “defeat device” designed to allow the vehicle to pass emissions tests but to violate emissions standards at other times;
- (d) whether any recall or repair will cause the affected vehicles to decrease in value, decrease in performance, or require higher fuel consumption;
- (e) whether Volkswagen knew about the “defeat device” and, if so, how long Volkswagen has known;
- (f) whether Volkswagen omitted material facts about the affected vehicles;
- (g) whether Volkswagen concealed the “defeat device”;
- (h) whether Volkswagen’s concealment induced Plaintiffs and the other class members to act to their detriment by purchasing affected vehicles;
- (i) whether Volkswagen's conduct violates consumer-protection statutes, warranty laws, and other laws as asserted herein;
- (j) whether the affected vehicles were unfit for the ordinary purpose for which they were used, in violation of the implied warranty of merchantability;
- (k) whether the affected vehicles were unfit for the particular purpose for which Plaintiffs and the other class members purchased them, in violation of the implied warranty of fitness for a particular purpose;
- (l) whether the affected vehicles violated the express warranties made by Volkswagen to the Plaintiffs and the other class members;

- (m) whether Plaintiffs and the other class members overpaid for their vehicles with “defeat devices”;
- (n) whether Volkswagen falsely advertised the affected vehicles as “green,” “clean diesel,” or otherwise marketed the vehicles as environmentally friendly;
- (o) whether Plaintiffs and the other class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- (p) whether Plaintiffs and the other class members are entitled to damages and other monetary relief and, if so, in what amount.

59. *Typicality: Federal Rule of Civil Procedure 23(a)(3)*. Plaintiffs’ claims are typical of the other class members’ claims because all class members were comparably injured through Volkswagen’s wrongful conduct as described above. Like Plaintiffs Fiddler and Terrell, all class members purchased or leased a Volkswagen or Audi vehicle designed, manufactured, marketed, and distributed by Volkswagen with a “defeat device” installed. Like the Plaintiffs, all class members have been damaged by Volkswagen’s actions and will incur costs and loss of value relating to the “defeat device.” Additionally, the factual bases of the claims are common to all class members.

60. *Adequacy: Federal Rule of Civil Procedure 23(a)(4)*. The Plaintiffs are adequate class representatives because their interests do not conflict with the interests of the other members of the class he seeks to represent. The Plaintiffs have retained counsel who are competent and experienced in complex class action litigation. Moreover, the Plaintiffs intend to prosecute this action vigorously. The Plaintiffs, and their counsel, will fairly and adequately protect the class’s interests in this case.

61. *Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2).*

Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs 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.

62. *Superiority: Federal Rule of Civil Procedure 23(b)(3).* A class action is superior to any other available means for the fair and efficient adjudication of this controversy. No unusual difficulties are likely to be encountered in the management of this class action. The damages that Plaintiffs and the other class members suffered are relatively small compared to the burden and expense required to litigate their claims individually against Volkswagen. Thus, class members would find it impracticable to seek redress individually for Volkswagen's wrongful conduct.

63. 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.

64. Moreover, separate actions create the risk of different courts imposing incompatible standards of conduct on Volkswagen. Such an outcome means needless duplication and protracted proceedings, and is inappropriate because common legal and factual questions predominate over individual questions.

## CAUSES OF ACTION

### COUNT I

#### **Violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) 18 U.S.C. § 1962(c)**

65. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

66. Volkswagen AG is a “person” under 18 U.S.C. § 1961(3).

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

68. Plaintiffs and class members are “person[s] injured in his or her business or property” by reason of Volkswagen AG’s violation of RICO within the meaning of 18 U.S.C. § 1964(c).

#### **The Volkswagen RICO Enterprise**

69. Upon information and belief, the following persons, and others presently unknown, have been members of and constitute an “association-in-fact enterprise” within the meaning of RICO (collectively, “the Volkswagen RICO Enterprise”):

- a. Volkswagen AG, Volkswagen Group of America, Audi AG, and Audi of America, who designed, manufactured, advertised, and sold hundreds of thousands of vehicles with defeat devices knowing that they contained these devices, the scope and nature of which they concealed from and misrepresented to the public and regulators for more than a decade.
- b. Volkswagen AG, Volkswagen Group of America, Audi AG, and Audi of America’s Officers and Executives, who have collaborated and colluded with each other and with other associates in fact in the Volkswagen RICO Enterprise to deceive Plaintiffs and class members

into purchasing defective vehicles, and actively concealing the illegal defeat devices from Plaintiffs and class members.

- c. Volkswagen AG, Volkswagen Group of America, Audi AG, and Audi of America's Engineers, who designed the defeat device software and collaborated and colluded with each other and with other associates in fact in the Volkswagen RICO Enterprise to deceive Plaintiffs and class members into purchasing defective vehicles, and actively concealing the illegal defeat devices from Plaintiffs and class members. Upon information and belief, these engineers include, but are not limited to, Ulrich Hackenberg and Wolfgang Hatz, who were involved in research and development and engine design.
- d. Third-party Volkswagen National Dealer Advisory Council, and independent association of Volkswagen dealers in the United States, and third-party independent Volkswagen franchisee dealers in the United States.
- e. Other third-party persons and entities that knowingly assisted Volkswagen's development, testing and production of the hardware and software that functioned as the defeat device.

70. The Volkswagen RICO Enterprise engaged in interstate and foreign commerce, and its activities affected interstate and foreign commerce. The Volkswagen RICO Enterprise is an association-in-fact of individuals and corporate entities within the meaning of 18 U.S.C. § 1961(4), consisting of "persons" associated together for a common purpose. The Volkswagen

RICO Enterprise had an ongoing organization with an ascertainable structure and functioned as a continuing unit with separate roles and responsibilities.

71. While Volkswagen AG, Volkswagen Group of America, Audi AG, Audi of America's, and other members of the Volkswagen RICO Enterprise participated in the conduct of the Volkswagen RICO Enterprise, they had an existence separate and distinct from the Volkswagen RICO Enterprise.

72. At all relevant times, Volkswagen AG operated, controlled, or managed the Volkswagen RICO Enterprise, through a variety of actions. The participation of Volkswagen Group of America, Audi AG, Audi of America, and others in the Volkswagen RICO Enterprise was necessary for the successful operation of its scheme to defraud because Volkswagen Group of America and other members of the Volkswagen RICO Enterprise either manufactured the affected vehicles, concealed the nature and scope of the defeat devices, or profited from such concealment.

73. The members of the Volkswagen RICO Enterprise all served a common purpose — to sell as many vehicles containing defeat devices as possible, and thereby maximize the revenue and profitability of the Volkswagen RICO Enterprise's members. The members of the Volkswagen RICO Enterprise shared the bounty generated by the enterprise by sharing the benefit derived from increased sales revenue generated by the scheme to defraud.

74. Each member of the Volkswagen RICO Enterprise, including the Defendants, benefited from the common purpose — Volkswagen AG, Volkswagen Group of American, Audi AG, Audi of America, and others sold more defeat device vehicles than they would have otherwise had the scope and nature of the defeat devices not been concealed, and sold or leased

those vehicles at a much higher price, as a result of the concealment of the scope and nature of the defeat devices from Plaintiffs and class members.

### **Pattern of Racketeering Activity**

75. Volkswagen AG, Volkswagen Group of American, Audi AG, Audi of America, and other members of the Volkswagen RICO Enterprise conducted and participated in the conduct of the affairs of the Volkswagen RICO Enterprise through a pattern of racketeering activity, beginning no later than 2009 and continuing to this day, that consists of numerous and repeated violations of the federal mail and wire fraud statutes. These statutes prohibit the use of any interstate or foreign mail or wire facility for the purpose of executing a scheme to defraud, in violation of 18 U.S.C. §§ 1341 and 1343.

76. For Volkswagen AG, the purpose of the scheme to defraud was to conceal the scope and nature of the illegal defeat devices found in hundreds of thousands of vehicles worldwide in order to sell more vehicles, to sell them at a higher price and/or for a higher profit, and to avoid incurring the expenses associated with repairing the defects. By concealing the scope and nature of the illegal defeat devices in the affected vehicles, Volkswagen AG also maintained and boosted consumer confidence in the “clean diesel” technology, and avoided remediation costs and negative publicity, all of which furthered the scheme to defraud and helped Volkswagen sell more vehicles than they would otherwise have sold, and to sell the affected vehicles at a much higher price or for a higher profit.

77. As detailed in the above, Volkswagen AG was well aware of the defeat devices, but intentionally subjected Plaintiffs and class members to the defeat devices to maximize its own profits. Moreover, since the defeat devices became known, the Volkswagen Group of America and Audi of America have failed to adequately remedy the defect.

78. To further the scheme to defraud, Volkswagen misrepresented and concealed the nature and scope of the defeat devices from federal regulators, enabling Volkswagen to escape the investigation and costs associated with recalls and corrective action.

79. To further the scheme to defraud, Volkswagen promoted and touted the reliability, and quality of the vehicles while simultaneously concealing the nature and scope of the defeat devices defect.

80. To further the scheme to defraud, Volkswagen AG permitted or caused Volkswagen and Audi dealerships to promote the reliability, and quality of the purported eco-friendly nature of the affected vehicles while simultaneously concealing the nature and scope of the defeat devices defect. To carry out, or attempt to carry out the scheme to defraud, Volkswagen AG has conducted or participated in the conduct of the affairs of the Volkswagen RICO Enterprise through the following pattern of racketeering activity that employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud):

- a. Volkswagen AG devised and furthered the scheme to defraud by use of the mail, telephone, and internet, and transmitted, or caused to be transmitted, by means of mail and wire communication travelling in interstate or foreign commerce, writing(s) and/or signal(s), including the Volkswagen website, communications with the EPA and/or CARB statements to the press, and communications with other members of the Volkswagen RICO Enterprise, as well as advertisements and other communications to Volkswagen's customers, including Plaintiffs and class members. Given that each affected vehicle required a COC

application, Volkswagen Group of America and Volkswagen AG used the mail and wires 30 times, at minimum, to submit the fraudulent COC applications; and

- b. Volkswagen AG utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the omissions, false pretense, and misrepresentations described herein.

81. Volkswagen AG's pattern of racketeering activity in violation of the mail and wire fraud statutes included transmitting or causing to be transmitted, by means of mail and wire communication traveling in interstate or foreign commerce, between its offices in Germany, Virginia, Michigan or among the other 20-plus offices in the United States communications concerning the illegal defeat devices and submissions to the EPA regarding COC applications for each model and year of the affected vehicles that failed to adequately disclose or address all auxiliary emission control devices that were installed in the Defective Vehicles. Volkswagen AG's conduct in furtherance of this scheme was intentional. Plaintiffs and class Members were directly harmed as a result of the Volkswagen AG's intentional conduct. Plaintiff, class members, and federal regulators, among others, relied on Volkswagen's material misrepresentations and omissions.

82. Volkswagen AG engaged in a pattern of related and continuous predicate acts beginning at least in 2009. The predicate acts constituted a variety of unlawful activities, each conducted with the common purpose of defrauding Plaintiffs and class members and obtaining significant monies and revenues from them while providing defeat device vehicles worth significantly less than the purchase price paid. The predicate acts also had the same or similar

results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

83. The predicate acts all had the purpose of generating significant revenue and profits for Volkswagen at the expense of Plaintiffs and class members. The predicate acts were committed or caused to be committed by Volkswagen AG through its participation in the Volkswagen RICO Enterprise and in furtherance of its fraudulent scheme, and were interrelated in that they involved obtaining Plaintiff's and class members' funds and avoiding the expenses associated with remediating the defect.

84. By reason of and as a result of the conduct of Volkswagen AG, and in particular its pattern of racketeering activity, Plaintiffs and class members have been injured in their business and/or property in multiple ways, including but not limited to:

- a. purchasing or leasing vehicles with defeat devices that Plaintiffs and class members would not otherwise have purchased or leased;
- b. overpaying for leased or purchased vehicles with defeat devices, in that Plaintiffs and class members believed they were paying for "green" eco-friendly vehicles when the affected vehicles purchased were neither "green" nor eco-friendly; and
- c. diminished value of the vehicles with defeat devices purchased by Plaintiffs and class members, which reduces the vehicles' resale value.

Volkswagen AG's violations of 18 U.S.C. § 1962(c) have directly and proximately caused injuries and damages to Plaintiffs and class members, and Plaintiffs and class members are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief and costs and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

## COUNT II

### Fraud by Concealment

85. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

86. Volkswagen intentionally designed the “defeat device” to circumvent the requirements of the Clean Air Act and falsely certified to the EPA that the affected vehicles were in compliance with those requirements. At the same time, Volkswagen was intentionally marketing and advertising the affected vehicles as “green” or “clean” and described the engine as a “TDI clean diesel engine.”

87. Plaintiffs and class members reasonably relied on Volkswagen’s false representations regarding the nature of the “TDI clean diesel” vehicles. They had no way of knowing that Volkswagen's representations were false and misleading. Plaintiffs and class members did not, and could not, discover Volkswagen’s deception on their own.

88. Volkswagen’s false representations were material to consumers, both because these representations concerned the quality of the vehicles with “defeat devices” installed, 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 Volkswagen well knew, its customers, including Plaintiffs and class members, highly valued that the vehicles they were purchasing or leasing were clean diesel cars, and consumers paid accordingly.

89. Volkswagen had a duty to disclose the truth about the affected vehicles to potential and actual consumers, and to the EPA. Volkswagen breached this duty in order to profit

at the expense of Plaintiffs, the other class members, and the public, who were put at risk from the elevated omissions.

90. Volkswagen likely still has not made full and adequate disclosures, and continues to defraud Plaintiffs and class members by concealing material information regarding the emissions qualities of the affected vehicles and its emissions deception.

91. Plaintiffs and class members were unaware of these omitted material facts. Had Plaintiffs and the other class members known the true nature of the “TDI clean diesel” vehicles, they would not have purchased “TDI clean diesel” cars manufactured by Volkswagen, would not have paid as much as they did for their “TDI clean diesel” vehicles, would not have continued to drive their heavily-polluting vehicles, and/or would have taken other affirmative steps in light of the information concealed from them.

92. Because of the concealment or suppression of the facts, Plaintiffs and class members have sustained damages. The “TDI clean diesel” vehicles purchased by the Plaintiffs and other class members are now diminished in value because of Volkswagen's concealment of the true quality and quantity of those vehicles' emissions and Volkswagen's failure to timely disclose the actual emissions qualities and quantities of the affected Volkswagen and Audi vehicles. Had Plaintiffs and class members been aware of Volkswagen's deceptions with regard to the actual emissions of the vehicles at issue, Plaintiffs and class members who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

93. As a result of the affected vehicles' diminished value, Plaintiffs and other class members will be unable to re-sell their Volkswagen or Audi “TDI clean diesel” vehicles, or will only be able to do so at a substantially reduced cost.

94. Accordingly, Volkswagen is liable to Plaintiffs and class members for damages in an amount to be proven at trial.

95. Volkswagen's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs and class members' rights and the representations that Volkswagen made to them, in order to enrich Volkswagen. Volkswagen's 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.

### **COUNT III**

#### **Breach of Contract**

96. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

97. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the "defeat device," caused Plaintiffs and the other class members to purchase or lease "TDI clean diesel" vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other class members would not have purchased or leased these vehicles, would not have purchased or leased these vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain the "TDI clean diesel" engine system and the "defeat device." Accordingly, Plaintiffs and the other class members overpaid for their vehicles and did not receive the benefit of their bargain.

98. Each sale or lease of an affected vehicle constitutes a contract between Volkswagen and the purchaser or lessee. Volkswagen breached these contracts by selling or leasing Plaintiffs and the other class members' defective vehicles with "defeat devices" installed,

and by misrepresenting or failing to disclose the existence of the “defeat device” and/or defective design, including information known to Volkswagen rendering each “TDI clean diesel” vehicle less safe and not emissions compliant, and thus less valuable, than vehicles not equipped with “TDI clean diesel” engine systems and “defeat devices.”

99. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiffs 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 IV**

##### **Breach of Express Warranty**

100. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

101. Volkswagen made numerous representations, descriptions, and promises to the Plaintiffs and class members regarding the performance and emissions controls of its diesel vehicles.

102. But Volkswagen knew or should have known that its representations, descriptions, and promises were false. Volkswagen was aware that it had installed “defeat devices” in the vehicles it sold to Plaintiffs and class members.

103. Plaintiffs and class members reasonably relied on Volkswagen's representations in purchasing “clean” diesel vehicles. But those vehicles did not perform as promised. Unknown to Plaintiff, those vehicles included devices that caused their emission reduction systems to perform at levels worse than advertised. Those devices are defects. Accordingly, Volkswagen breached

its express warranty by providing a product containing defects that were never disclosed to the Plaintiffs and class members.

104. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and class members suffered significant damages and seek the relief described below.

## **COUNT V**

### **Breach of Implied Warranty**

105. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

106. Volkswagen made numerous representations, descriptions, and promises to Plaintiffs and class members regarding the functionality of Volkswagen's "clean" diesel technology.

107. Plaintiffs and class members reasonably relied on Volkswagen's representations in purchasing their "TDI clean diesel" vehicles.

108. Volkswagen knew that its representations, descriptions and promises regarding its diesel engines were false.

109. When Plaintiffs and class members purchased Volkswagen's diesel vehicles, the vehicles did not conform to the promises or affirmations of fact Volkswagen made in 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.

110. Accordingly, these vehicles failed to conform to Volkswagen's implied warranty regarding their functionality.

111. As a direct and proximate result of Volkswagen's false and misleading representations and warranties, Plaintiffs and class members suffered significant injury when Volkswagen sold them cars that are now worth far less than the price Plaintiffs and class members paid. Accordingly, Plaintiffs and the Class seek the relief described below.

## **COUNT VI**

### **Unjust Enrichment**

112. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

113. Plaintiffs and class members conferred a benefit on Volkswagen by using and paying for its vehicles.

114. Volkswagen has retained this benefit, and knows of and appreciates this benefit.

115. Volkswagen was and continues to be unjustly enriched at the expense of Plaintiffs and class members, who received less than the bargained-for exchange because of Volkswagen's deception.

116. Volkswagen should be required to disgorge this unjust enrichment.

## **COUNT VII**

### **Magnuson-Moss Act 15 U.S.C. §§ 2301 et seq.**

117. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

118. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 2301(3), and through the Court's supplemental jurisdiction at 28 U.S.C. § 1367.

119. The affected Volkswagen and Audi vehicles are a “consumer product,” as defined by 15 U.S.C. § 2301(1).

120. Plaintiffs and the other class members are “consumers,” as defined by U.S.C. § 301(3).

121. Volkswagen is a “warrantor” and “supplier” as defined by 15 U.S.C. § 2301(4) and (5).

122. 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 warranty.

123. Volkswagen provided Plaintiffs and class members with “implied warranties,” as defined by 15 U.S.C. § 2301(7).

124. Volkswagen has breached these implied warranties as described in more detail above. Without limitation, Volkswagen’s vehicles with “defeat devices” are defective, as described above, which resulted in the problems and failures also described above.

125. By Volkswagen's conduct as described herein, including Volkswagen’s knowledge of the defects inherent in the vehicles and its action, and inaction, in the face of the knowledge, Volkswagen has failed to comply with its obligations under its written and implied promises, warranties, and representations.

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

127. All jurisdictional prerequisites have been satisfied.

128. Plaintiffs and members of the class are in privity with Volkswagen in that they purchased the software from Volkswagen or its agents. As a result of Volkswagen's breach of implied warranties, Plaintiffs and the 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 VIII**

#### **Violations of the Virginia Consumer Protection Act Va. Code Ann. §§ 59.1-196, et seq.**

129. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

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

131. Volkswagen is a “supplier” as defined by Va. Code Ann. § 59.1-198. The transactions described above – in which Plaintiffs and other class members purchased or leased vehicles with defeat devices installed from Volkswagen – are “consumer transactions” as defined by Va. Code Ann. § 59.1-198, because the affected vehicles were manufactured and sold by Defendants with the intent that they be sold to Plaintiffs and other putative class members through Defendants’ dealer network and other downstream sellers, and such purchases or leases by Plaintiffs and other putative class members were primarily for personal, family or household purposes.

132. Defendants' violation of the Virginia Consumer Protection Act as alleged herein was willful. In the course of Volkswagen's business, it willfully concealed and failed to disclose the "defeat device" in the affected vehicles as described above, and willfully and uniformly misrepresented the condition of the vehicles as alleged heretofore.

133. By doing so, Volkswagen engaged in acts and practices violating Va. Code Ann. § 59.1-200(A), including representing that the affected vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the affected vehicles are of a particular standard and quality when they are not; advertising the affected vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

134. Volkswagen's actions as set forth above occurred in the conduct of trade or commerce.

135. As a direct and proximate result of Volkswagen's violations of the Virginia Consumer Protection Act, including the misrepresentations and omissions described above, Plaintiffs and class members suffered significant actual loss and damages and seek actual damages, treble damages, statutory damages and attorneys fees and costs pursuant to Va. Code §59.1-204 and as more fully described below.

136. Plaintiffs and class members are also entitled to additional relief of disgorgement, repurchase and other remedy pursuant to Va. Code § 59.1-205.

## **COUNT IX**

### **Violations of the Minnesota Deceptive Trade Practices Act Minn. Stat. §§ 325D.43, et. seq.**

137. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

138. Under the Minnesota Deceptive Trade Practices Act, “[a] person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person: . . . (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; . . . (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . . (9) advertises goods or services with intent not to sell them as advertised; . . . (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.” Minn. Stat. §§ 325D.44.

139. In the course of Volkswagen’s business, it willfully concealed and failed to disclose the “defeat device” in the affected vehicles as described above. By doing so, Volkswagen engaged in acts and practices violating Minn. Stat. §§ 325D.44.

140. Volkswagen engaged in acts and practices violating Minn. Stat. §§ 325D.44 Subd. 1(5) by representing that the affected vehicles have characteristics, uses, benefits, and qualities that they do not. Volkswagen advertised and represented to consumers, including Plaintiffs and the other class members, that its “TDI clean diesel” vehicles had particular characteristics, uses, and benefits that they do not. Volkswagen represented to Plaintiffs and the other class members, for instance, that its “TDI clean diesel” vehicles were “green” and environmentally friendly and that the vehicles met federal and state emissions standards for diesel passenger vehicles. Volkswagen also represented to consumers, including Plaintiffs and the other class members, that its “TDI clean diesel” vehicles coupled low emissions with fuel efficiency and high performance. Volkswagen, however, knew that the affected vehicles did not have these characteristics.

141. Volkswagen engaged in acts and practices violating Minn. Stat. §§ 325D.44 Subd. 1(7) by representing that its TDI clean diesel vehicles are of a particular standard, quality, or grade when they were actually of another. Volkswagen represented to consumers, including Plaintiffs and other class members, that the TDI clean diesel vehicles met federal and state emissions standards. Volkswagen knew, however, that the installed defeat devices caused the vehicles to produce emissions far exceeding these standards. Volkswagen represented these vehicles as being of a standard, grade, and quality that met EPA requirements, when in reality they did not.

142. Volkswagen engaged in acts and practices violating Minn. Stat. §§ 325D.44 Subd. 1(9) by advertising its TDI clean diesel vehicles with intent not to sell them as advertised. Volkswagen knew that the affected vehicles were not, in fact, “green,” low-emissions, high performance, and fuel efficient. Nonetheless, Volkswagen advertised them as having these attributes when Volkswagen never intended to sell vehicles that actually met the advertised description.

143. Volkswagen engaged in acts and practices violating Minn. Stat. §§ 325D.44 Subd. 1(13) by engaging in conduct that created a likelihood of confusion or of misunderstanding. By installing the defeat devices, Volkswagen confused and misled its customers, the EPA, and state regulators about the emissions of its TDI clean diesel vehicles and about their performance and fuel-efficiency. Volkswagen also confused and misled consumers and regulators by concealing the existence of the defeat devices.

144. As a direct and proximate result of Volkswagen’s violations of the Minnesota Deceptive Trade Practices Act, Plaintiffs and class members suffered significant damages and seek the relief described below.

**PRAYER FOR RELIEF**

Plaintiffs individually and on behalf of all class members respectfully request that the Court enter judgment in his favor and against Volkswagen Group of America and Volkswagen AG as follows:

- A. Certification of the proposed class, including appointment of Plaintiff's counsel as class counsel;
- B. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- C. Injunctive relief in the form of a recall or free replacement program;
- D. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;
- E. Other damages as permitted by applicable laws;
- F. Pre- and post-judgment interest on any amounts awarded;
- G. Costs and attorneys' fees; and
- H. Such other or further relief as may be appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial.

By: March J. Espinoza

Matthew J. Erausquin, VSB No. 65434  
Casey S. Nash, VSB No. 84261  
CONSUMER LITIGATION ASSOCIATES  
1800 Diagonal Rd, Suite 600  
Alexandria, VA 22314, USA  
703 273 7770

Leonard A. Bennett  
CONSUMER LITIGATION ASSOCIATES  
763 J. Clyde Morris Blvd. 1A  
Newport News, VA 23601  
757 930 3660

Craig Wildfang  
Tara Sutton  
Christopher Madel  
Randall Tietjen  
Munir Meghjee  
Stacey Slaughter  
Kaitlyn Johnson  
ROBINS KAPLAN LLP  
800 LaSalle Avenue  
Suite 2800  
Minneapolis, MN 55402  
612 349 8500

Roman Silberfeld  
RSilberfeld@RobinsKaplan.com  
ROBINS KAPLAN LLP  
2049 Century Park East  
Suite 3400  
Los Angeles, CA 90067  
310 552 0130

Hollis Salzman  
Kellie Lerner  
ROBINS KAPLAN LLP  
601 Lexington Ave  
Suite 3400  
New York, NY 10022  
212 980 7400

*Attorneys for Plaintiffs*

JS 44 (Rev. 12/12)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 Mark Fiddler and China Terrell, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
 Matthew J. Erasquin and Casey S. Nash  
 Consumer Litigation Associates, P.C.  
 1800 Diagonal Rd., Ste. 600, Alexandria, VA 22314; 703-273-7770

**DEFENDANTS**  
 Volkswagen Group of America, Inc., Audi of America, Inc., Volkswagen AG, and Audi AG

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

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

Attorneys (If Known) \_\_\_\_\_

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

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input checked="" type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY - Product Liability</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 18 U.S.C. 1962(c), 15 U.S.C. §§ 2301 et seq.

Brief description of cause:  
 Racketeer Influenced and Corrupt Organizations Act, Magnuson-Moss Act, etc.

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

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE O'Grady    DOCKET NUMBER 1:15-cv-01218

DATE 10/06/2015    SIGNATURE OF ATTORNEY OF RECORD Matthew J. Erasquin

FOR OFFICE USE ONLY

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

**CLA**  
**Consumer Litigation Associates, P.C.**  
ATTORNEYS AND COUNSELORS AT LAW  
A PROFESSIONAL CORPORATION

**HAMPTON ROADS OFFICE:**  
763 J. Clyde Morris Blvd. • Suite 1-A  
Newport News, Virginia 23601

Matthew J. Eerausquin, Esq.  
matt@clalegal.com  
(703) 273-7770 Phone  
(888) 892-3512 Facsimile

**NORTHERN VIRGINIA OFFICE:**  
1800 Diagonal Road • Suite 600  
Alexandria, Virginia 22314

**REPLY TO: NORTHERN VIRGINIA OFFICE**

October 7, 2015

**Via Hand Delivery**

Fernando Galindo, Clerk  
U.S. District Court, Eastern District of Virginia  
Alexandria Division  
Albert V. Bryan U.S. Courthouse  
401 Courthouse Square  
Alexandria, Virginia 22314

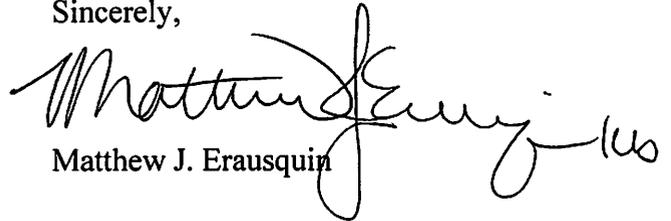
RECEIVED  
OCT -7 PM 4:03  
CLERK OF DISTRICT COURT  
Alexandria, Virginia

*Re: Mark Fiddler v. Volkswagen Group of America, Inc.*

Mr. Galindo:

Please find the original complaint enclosed for filing with regard to the above-referenced matter, an additional copy to be date stamped for our records, as well as a copy for the Defendant. I have also enclosed a check in the amount of \$400.00. Additionally, I have provided a postage-prepaid return envelope for the documents to be returned to my attention for service of process. Thank you for your assistance in this matter, and if you have any questions, please do not hesitate to contact me.

Sincerely,

  
Matthew J. Eerausquin

MJE/kb  
Enclosures: a/s

Court Name: United States District Court  
Division: 1  
Receipt Number: 14683054571  
Cashier ID: rbroaden  
Transaction Date: 10/07/2015  
Payer Name: CONSUMER LITIGATION ASSOC

---

CIVIL FILING FEE  
For: CONSUMER LITIGATION ASSOC  
Amount: \$400.00

---

CHECK  
Remitter: CONSUMER LITIGATION ASSOC  
Check/Money Order Num: 8358  
Amt Tendered: \$400.00

---

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

---

FILING FEE  
115CV1308