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

-----X
ALAN GREENBERG, SALVATORE :
SELLITTO, KEITH ADELSON, CARMELLA :
LIBOLT, KENNETH CALICCHIO, LORRYN :
CALICCHIO, NICOLE PIN MAZZA, TREVAR :
MAZZA, CONSTANCE McINTOSH, ROBERT :
LEHMAN, ELIZABETH HANDY, SALLY :
JOHNSTON, ROGER SCHOFIELD, :
RAYMOND STOCKER, GEORGE MOHR, :
WALTER CHILES, CONNOR ENGLISH, :
JOLENE STUBBS and JEFFREY HURT, :
individually and on behalf of all others similarly :
situated, :
:
Plaintiffs, :
:
v. :
:
VOLKSWAGEN GROUP OF AMERICA, INC., :
VOLKSWAGEN OF AMERICA, INC., AUDI :
AG, AUDI OF AMERICA, LLC and :
VOLKSWAGEN AG, :
:
Defendants. :
-----X

No. _____

COMPLAINT – CLASS ACTION

JURY TRIAL DEMANDED

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DEMAND FOR JURY TRIAL106

Plaintiffs Alan Greenberg, residing at 336 Woodward Road, Manalapan, NJ 07726; Salvatore Sellitto, residing at 73 Citadel Drive, Jackson, NJ 08527; Keith Adelson, residing at 86 Lakeshore Drive, Oakland, NJ 07436; Carmella Libolt, residing at 189 Atlantis Ave., Manahawkin, NJ 08005; Kenneth Calicchio, residing at 13 Buxton Ct., Barnegat, NJ 08005; Lorryn Calicchio, residing at 13 Buxton Ct., Barnegat, NJ 08005; Nicole Pin Mazza, residing at 1205 Oregon St., Berkeley, CA 94702; Trevar Mazza, residing at 1205 Oregon St., Berkeley, CA 94702; Constance McIntosh, residing at 232 East Lakewood Rd., West Palm Beach, FL 33405; Robert Lehman, residing at 2023 Southwest Indianola Rd., Benton, KS 67017; Elizabeth Handy, residing at 1306 Lowman Street, Baltimore, MD 20230; Sally Johnston, residing at 6451 Clayton Rd., Apt. 302, St. Louis, MO 63117; Roger Schofield, residing at 7029 Magic Moment Ln., Las Vegas, NV 89119; Raymond Stocker, residing at 790 Franklin Pl., Franklin Sq., NY 11010; George Mohr, residing at 960 Crackel Road, Aurora, OH 44202; Walter Chiles, residing at 1148 Maplecrest Circle, Gladwyne, PA 19035; Connor English, residing at 497 Indian Creek Rd, Harleysville, PA 19438; Jolene Stubbs, residing at 2244 Fairway Dr., Spanish Fork, UT 84660; and Jeffrey Hurt, residing at 411 Bobolink Ave., Grafton, WI 53024 (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, allege the following against Volkswagen Group of America, Inc., Volkswagen of America, Inc., Audi AG, Audi of America, LLC and Volkswagen AG (collectively, “Defendants” or “Volkswagen”), based where applicable on personal knowledge, information and belief, and the investigation of counsel.

NATURE OF THE ACTION

1. This nationwide class action concerns the intentional installation of so-called emission “defeat devices” on over 482,000 clean diesel (“CleanDiesel” or “TDI”) Volkswagen and Audi vehicles sold in the United States since 2009 (the “Affected Vehicles”). Volkswagen

marketed those vehicles as environmentally-friendly cars that also had extremely high fuel efficiency and performance, with very low emissions. Although Volkswagen successfully marketed these expensive cars as “green”, such environmentally friendly representations were a sham.

2. According to the U.S. Environmental Protection Agency (the “EPA”), Volkswagen installed its emission “defeat device” in at least the following diesel vehicles:

Model Year	Make and Model
2009	Volkswagen Jetta TDI and Jetta Sportwagen TDI
2010	Volkswagen Golf TDI, Jetta TDI and Jetta Sportwagen TDI; Audi A3
2011	Volkswagen Golf TDI, Jetta TDI and Jetta Sportwagen TDI; Audi A3
2012	Volkswagen Beetle TDI, Beetle Convertible TDI, Passat TDI, Golf TDI, Jetta TDI and Jetta Sportwagen TDI; Audi A3
2013	Volkswagen Beetle TDI, Beetle Convertible TDI, Passat TDI, Golf TDI, Jetta TDI and Jetta Sportwagen TDI; Audi A3
2014	Volkswagen Beetle TDI, Beetle Convertible TDI, Passat TDI, Golf TDI, Jetta TDI and Jetta Sportwagen TDI; Audi A3
2015	Volkswagen Beetle TDI, Beetle Convertible TDI, Passat TDI, Golf TDI, Golf Sportwagen TDI and Jetta TDI; Audi A3

The EPA and other regulators and law enforcement entities are currently investigating whether the Volkswagen installed the device in other cars. Additional vehicle models and model years may thus be added to this list when new facts are discovered.

3. In creating its massive deception, Volkswagen designed and installed the defeat devices that worked by switching on the full emissions control systems in the Affected Vehicles *only* when the car is undergoing periodic emissions testing. However, the technology needed to control emissions from these vehicles in order to meet state and federal emissions regulations also

reduced the vehicles' performance, by significantly limiting acceleration, torque and fuel efficiency. To conceal such reduced performance, the defeat device shuts off most of the emissions control systems in the car once the emissions testing is complete.

4. Once the emission control systems were disabled by the defeat device, the Affected Vehicles emitted up to 40 times as much pollution into the environment as is allowed under the federal Clean Air Act and state regulations. Thus, instead of delivering on its promise of extremely high fuel mileage coupled with low emissions, Volkswagen created a massive deception to make it simply *appear* that its cars delivered on Volkswagen's representations, when, in fact, they plainly did not.

5. Certain of Volkswagen's deceptive conduct was first publicly revealed in a Notice of Violation dated September 18, 2015 that the EPA issued to Volkswagen, as well as a letter from the California Air Resources Board ("CARB") to Volkswagen dated that same day. Copies of these documents are attached as Exhibits A and B, respectively.

6. On the heels of those stunning revelations, *The Wall Street Journal* reported on September 21, 2015, that the U.S. Department of Justice, through its Environmental and Natural Resources Division, is conducting a criminal probe of Volkswagen over its alleged cheating on U.S. emissions tests. In addition, Volkswagen AG's Chief Executive Officer Martin Winterkorn ("Winterkorn") has stated that the company has commissioned an external probe into the matter.

7. In addition, on September 21, 2015, *Bloomberg Business* reported that Michael Horn ("Horn"), Volkswagen's top U.S. executive, had publicly admitted to the company's wrongdoing in connection with the diesel-emissions cheating scandal. During a corporate event in Brooklyn, New York on the evening of September 20, 2015, Horn made the astonishing admission that: "Our company was dishonest with the EPA, and the California Air Resources

Board and with all of you.” Horn further characterized the Volkswagen’s misconduct by stating, and arguably understating, that “[w]e have totally screwed up.”

8. On September 22, 2015, Volkswagen revealed that 11 million of its diesel cars worldwide had been equipped with the software used to cheat on emissions tests and that the company has set aside the supposed equivalent of half a year’s profits – 6.5 billion euros, or about \$7.3 billion – to cover costs associated with its misconduct.

9. On September 23, 2015, CEO Winterkorn announced that he was resigning in the wake of the company’s scandal arising from its use of the fraudulent emissions device, professing, “I am shocked by the events of the past few days.... Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group.”

10. On October 5, 2015, *The Wall Street Journal* reported that Volkswagen’s internal investigation has focused on several of its key engineering and development personnel, including Ulrich Hackenberg, Audi’s chief engineer, Wolfgang Hatz, developer of Porsche’s Formula One and Le Mans racing engines, and Heinz-Jakob Neusser, head of development at the VW brand. Reportedly, all three of those officials have been “suspended” in connection with Volkswagen’s investigation of the emissions cheating scandal.

11. The egregious and outrageous misconduct of Volkswagen detailed in this Complaint, much of which Volkswagen has already acknowledged, has indisputably worked as a massive consumer fraud in causing significant damages to Plaintiffs and other persons similarly situated.

JURISDICTION AND VENUE

12. 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 member of the proposed class is of

diverse citizenship from one defendant, there are more than 100 class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

13. This Court has also jurisdiction over this action pursuant to 28 U.S.C. § 1331.

14. This Court has personal jurisdiction over Volkswagen because it conducts business in State of New Jersey, and has sufficient minimum contacts with New Jersey.

15. 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, and because Volkswagen has caused harm to class members residing in this District.

PARTIES

16. Plaintiff Alan Greenberg (“Greenberg”) is an individual residing in Monmouth County, New Jersey.

17. Plaintiff Greenberg purchased a 2014 Volkswagen Passat TDI from Freehold Volkswagen in Freehold, New Jersey. Plaintiff still owns this vehicle.

18. Unknown to Plaintiff Greenberg at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including nitrogen oxides (“NOx”). The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

19. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Greenberg, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions

standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

20. Plaintiff Greenberg would not have paid as much for the Volkswagen Passat, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

21. Plaintiff Salvatore Sellitto (“Sellitto”) is an individual residing in Ocean County, New Jersey.

22. Plaintiff Sellitto purchased a 2015 Volkswagen Jetta TDI from World Volkswagen in Neptune, New Jersey. Plaintiff still owns this vehicle.

23. Unknown to Plaintiff Sellitto at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

24. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Sellitto, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

25. Plaintiff Sellitto would not have paid as much for the Jetta, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emission “defeat device.”

26. Plaintiff Keith Adelson (“Adelson”) is an individual residing in Bergen County, New Jersey. Plaintiff still owns this vehicle.

27. Plaintiff Adelson purchased a 2015 Gulf Sportwagen TDI from Crestmont Volkswagen in Pompton Plains, New Jersey.

28. Unknown to Plaintiff Adelson at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

29. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Adelson, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

30. Plaintiff Adelson would not have paid as much for the Gulf Sportwagen, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

31. Plaintiff Carmella Libolt (“Libolt”) is an individual residing in Ocean County, New Jersey. Plaintiff still owns this vehicle.

32. Plaintiff Libolt purchased a 2015 Volkswagen Jetta TDI from Toms River Volkswagen in Toms River, New Jersey.

33. Unknown to Plaintiff Libolt at the time she purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of her vehicle.

34. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Libolt, such that Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

35. Plaintiff Libolt would not have paid as much for the Passat, or likely would not have purchased it at all, if she had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emission “defeat device.”

36. Plaintiffs Kenneth Calicchio and Lorryn Calicchio (the “Calicchios”) are individuals residing in Ocean County, New Jersey.

37. The Calicchios purchased a 2015 Volkswagen Jetta TDI from Toms River Volkswagen in Toms River, New Jersey. Plaintiffs still own this vehicle.

38. Unknown to the Calicchios at the time they purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen

has caused Plaintiffs out-of-pocket loss and will result in the future attempted repairs and the diminished value of their vehicle.

39. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to the Calicchios, such that Plaintiffs purchased their vehicle on the reasonable, but mistaken, belief that their vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

40. The Calicchios would not have paid as much for the Jetta, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

41. Plaintiffs Nicole Pin Mazza and Trevar Mazza (the “Mazzas”) are individuals residing in Alameda County, California.

42. The Mazzas purchased a 2009 Volkswagen Jetta TDI from Roadsport Specialty Auto Sales in San Ramon, California. Plaintiffs still own this vehicle.

43. Unknown to the Mazzas at the time they purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiffs out-of-pocket loss and will result in the future attempted repairs and the diminished value of their vehicle.

44. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to the Mazzas, such that Plaintiffs purchased their vehicle on the reasonable, but mistaken, belief that their vehicle complied with U.S. emissions

standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

45. The Mazzas would not have paid as much for the Jetta, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

46. Plaintiff Constance McIntosh (“McIntosh”) is an individual residing in Palm Beach County, Florida.

47. Plaintiff McIntosh purchased a 2014 Passat TDI from Schumacher Volkswagen North Palm in Lake Park, Florida. Plaintiff still owns this vehicle.

48. Unknown to Plaintiff McIntosh at the time she purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of her vehicle.

49. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff McIntosh, such that Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

50. Plaintiff McIntosh would not have paid as much for the Passat, or likely would not have purchased it at all, if she had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

51. Plaintiff Robert Lehman (“Lehman”) is an individual residing in Butler County, Kansas.

52. Plaintiff Lehman purchased a 2015 Passat TDI from Mike Steven Volkswagen in Wichita, Kansas. Plaintiff still owns this vehicle.

53. Unknown to Plaintiff Lehman at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

54. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Lehman, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

55. Plaintiff Lehman would not have paid as much for the Gulf Sportwagen, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

56. Plaintiff Elizabeth Handy (“Handy”) is an individual residing in the County of Baltimore City in Maryland.

57. Plaintiff Handy purchased a 2015 Jetta TDI from Ourisman Volkswagen in Laurel, Maryland. Plaintiff still owns this vehicle.

58. Unknown to Plaintiff Handy at the time she purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of her vehicle.

59. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Handy, such that Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

60. Plaintiff Handy would not have paid as much for the Jetta TDI, or likely would not have purchased it at all, if she had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

61. Plaintiff Sally Johnston (“Johnston”) is an individual residing in St. Louis County, Missouri.

62. Plaintiff Johnston purchased a 2010 Jetta Sportwagen TDI from Bommarito Volkswagen in Hazelwood, Missouri. Plaintiff still owns this vehicle.

63. Unknown to Plaintiff Johnston at the time she purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device”

by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of her vehicle.

64. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Johnston, such that Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

65. Plaintiff Johnston would not have paid as much for the Jetta Sportwagen TDI, or likely would not have purchased it at all, if she had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

66. Plaintiff Roger Schofield (“Schofield”) is an individual residing in Clark County, Nevada.

67. Plaintiff Schofield purchased a 2013 Jetta TDI from Findlay North Volkswagen in Las Vegas, Nevada. Plaintiff still owns this vehicle.

68. Unknown to Plaintiff Schofield at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

69. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Schofield, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions

standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

70. Plaintiff Schofield would not have paid as much for the Jetta TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

71. Plaintiff Raymond Stocker (“Stocker”) is an individual residing in Nassau County, New York.

72. Plaintiff Stocker purchased a 2013 Jetta Sportwagen TDI from Sunrise Volkswagen in Lynbrook, New York. Plaintiff still owns this vehicle.

73. Unknown to Plaintiff Stocker at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

74. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Stocker, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

75. Plaintiff Stocker would not have paid as much for the Jetta Sportwagen TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

76. Plaintiff George Mohr (“Mohr”) is an individual residing in Portage County, Ohio.

77. Plaintiff Mohr purchased a 2012 Golf TDI from EastSide Mazda Volkswagen in Willoughby Hills, Ohio. Plaintiff still owns this vehicle.

78. Unknown to Plaintiff Mohr at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

79. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Mohr, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

80. Plaintiff Mohr would not have paid as much for the Golf TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

81. Plaintiff Walter Chiles (“Chiles”) is an individual residing in Montgomery County, Pennsylvania.

82. Plaintiff Chiles purchased a 2011 Jetta TDI from Piazza Volkswagen in Ardmore, Pennsylvania. Plaintiff still owns this vehicle.

83. Unknown to Plaintiff Chiles at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

84. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Chiles, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

85. Plaintiff Chiles would not have paid as much for the Jetta TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

86. Plaintiff Connor English (“English”) is an individual residing in Montgomery County, Pennsylvania.

87. Plaintiff English purchased a 2014 Jetta TDI from Jeff D’Ambrosio in Downingtown, Pennsylvania. Plaintiff still owns this vehicle.

88. Unknown to Plaintiff English at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen

has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

89. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff English, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

90. Plaintiff English would not have paid as much for the Jetta TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

91. Plaintiff Jolene Stubbs (“Stubbs”) is an individual residing in Utah County, Utah.

92. Plaintiff Stubbs purchased a 2014 Passat TDI from Jimmy’s Love Bug in Provo, Utah. Plaintiff still owns this vehicle.

93. Unknown to Plaintiff Stubbs at the time she purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of her vehicle.

94. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Stubbs, such that Plaintiff purchased her vehicle on the reasonable, but mistaken, belief that her vehicle complied with U.S. emissions

standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

95. Plaintiff Stubbs would not have paid as much for the Passat TDI, or likely would not have purchased it at all, if she had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

96. Plaintiff Jeffrey Hurt (“Hurt”) is an individual residing in Ozaukee County, Wisconsin.

97. Plaintiff Hurt purchased a 2013 Passat TDI from Concourse Motors in Glendale, Wisconsin. Plaintiff still owns this vehicle.

98. Unknown to Plaintiff Hurt at the time he purchased, the vehicle was equipped with an emissions control “defeat device” which allowed the vehicle to get an undeserved EPA certification and pass state emissions tests, but at all other times emit up to 40 times the allowed level of dangerous pollutants, including NOx. The use of the “defeat device” by Volkswagen has caused Plaintiff out-of-pocket loss and will result in the future attempted repairs and the diminished value of his vehicle.

99. Volkswagen knew about and purposefully used the “defeat device,” but did not disclose the “defeat device” and its effects to Plaintiff Hurt, such that Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle complied with U.S. emissions standards, was properly EPA certified, and would retain all of its operating characteristics throughout its useful life.

100. Plaintiff Hurt would not have paid as much for the Passat TDI, or likely would not have purchased it at all, if he had known that the emissions were much higher than advertised and that Volkswagen had improperly installed an emissions “defeat device.”

101. Defendant Volkswagen Group of America, Inc. is a corporation doing business in every U.S. state and the District of Columbia, and is organized under the laws of the State of New Jersey, with its principal place of business at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. Volkswagen is therefore a citizen of New Jersey and Virginia. *See* 28 U.S.C. § 1332(d)(10).

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

103. Defendant Audi AG is a car corporation organized and existing under German law, with its principal place of business in Ingolstadt, Germany and is a subsidiary of the Volkswagen AG.

104. Defendant Audi of America, LLC (together with Audi AG, “Audi”) is a subsidiary of Audi AG that sells Audi vehicles in the United States. It is organized under the law of Delaware and its United States headquarters at located at the same address as Volkswagen Group of America, Inc. in Herndon, Virginia.

105. Defendant Volkswagen AG is a car corporation organized and existing under German law, with its principal place of business in Wolfsburg, Germany. It is the parent company of Defendants Volkswagen Group of America, Inc. and Audi.

106. At all relevant times, Volkswagen and/or its affiliates and agents manufactured, distributed, sold, leased and warranted the Affected Vehicles under the Volkswagen and Audi brand names throughout the United States. Volkswagen and/or its affiliates and agents designed, manufactured and installed the CleanDiesel engines systems in the Affected Vehicles, which

included the “defeat device.” Volkswagen and/or its affiliates and agents also developed and disseminated the owners’ manuals and warranty booklets, advertisements, and other promotional materials relating to the Affected Vehicles.

CLASS ACTION ALLEGATIONS

107. Plaintiffs bring this action on behalf of themselves 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 and subclasses:

The Nationwide Class (the “Class”)

All persons or entities who purchased or leased an Affected Vehicle in the United States, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The California Subclass (the “California Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of California, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Florida Subclass (the “Florida Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of Florida, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Kansas Subclass (the “Kansas Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of Kansas, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Maryland Subclass (the “Maryland Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of Maryland, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Missouri Subclass (the “Missouri Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of Missouri, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Nevada Subclass (the “Nevada Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of Nevada, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The New Jersey Subclass (the “New Jersey Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of New Jersey, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The New York Subclass (the “New York Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of New York, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Ohio Subclass (the “Ohio Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of Ohio, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Pennsylvania Subclass (the “Pennsylvania Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the Commonwealth of Pennsylvania, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Utah Subclass (the “Utah Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of Utah, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

The Wisconsin Subclass (the “Wisconsin Subclass”)

All persons or entities who purchased or leased an Affected Vehicle in the State of Wisconsin, including, without limitation: Volkswagen Jetta TDI, Model Year (“MY”) 2009-2015; Volkswagen Jetta Sportwagen TDI, MY 2009-2014; Volkswagen Golf TDI, MY 2009-2015; Golf Sportwagen TDI, MY 2015; Volkswagen Beetle TDI, MY 2012-2015; Volkswagen Beetle Convertible TDI, MY 2012-2015; Volkswagen Passat TDI, MY 2012-2015; and Audi A3, MY 2010-2015.

108. The California Subclass, Florida Subclass, Kansas Subclass, Maryland Subclass, Missouri Subclass, Nevada Subclass, New Jersey Subclass, New York Subclass, Ohio Subclass, Pennsylvania Subclass, Utah Subclass and Wisconsin Subclass are collectively referred to as the “Subclasses”.

109. Excluded from the Class and Subclasses are individuals who have personal injury claims resulting from the “defeat device” in the CleanDiesel system. Also excluded from the Class and Subclasses are Volkswagen and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class and Subclasses; governmental entities; and the judge to whom this case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the Class and Subclasses definition based upon information learned through discovery.

110. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their 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.

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

112. **Numerosity (Fed. R. Civ. P. 23(a)(1))**: The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are not less than hundreds of thousands of members of the Class, the precise number of Class members is unknown to Plaintiffs, but may be ascertained from Volkswagen's 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.

113. **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2) and 23(b)(3))**: This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- (a) Whether Volkswagen engaged in the conduct alleged herein;
- (b) Whether Volkswagen designed, advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the stream of commerce in the United States;
- (c) Whether the CleanDiesel engine system in the Affected Vehicles contains a defect in that it does not comply with EPA requirements;
- (d) Whether the CleanDiesel engine systems in Affected Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Affected Vehicles;
- (e) Whether Volkswagen knew about the "defeat device" and, if so, how long Volkswagen has known;
- (f) Whether Volkswagen designed, manufactured, marketed, and distributed Affected Vehicles with a "defeat device";
- (g) Whether Volkswagen's conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;

- (h) Whether Plaintiffs and the other Class members overpaid for their Affected Vehicles;
- (i) Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- (j) Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

114. **Typicality (Fed. R. Civ. P. 23(a)(3))**: Plaintiffs' 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.

115. **Adequacy (Fed. R. Civ. P. 23(a)(4))**: Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Class they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Class' interests will be fairly and adequately protected by Plaintiffs and their counsel.

116. **Declaratory and Injunctive Relief (Fed. R. Civ. P. 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.

117. **Superiority (Fed. R. Civ. P. 23(b)(3))**: 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 Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims

against Volkswagen, so it would be impracticable for members of the Class to individually seek redress for Volkswagen's wrongful conduct.

118. 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.

STATUTES OF LIMITATION

119. For the following reasons, any otherwise-applicable statutes of limitation have been tolled or are otherwise inapplicable with respect to all claims alleged in this Complaint.

A. Discovery Rule Tolling

120. Within the time period of any applicable statutes of limitation, Plaintiffs and other Class members, through the exercise of reasonable diligence, could not have discovered that Volkswagen was concealing and misrepresenting the true emissions levels of the Affected Vehicles, including but not limited to Volkswagen's unlawful use of emission defeat devices.

121. 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 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. Thus, Volkswagen's deception with respect to its CleanDiesel engines, engine control systems, and "defeat devices" was painstakingly concealed from consumers and regulators alike.

122. Plaintiffs 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 Volkswagen intentionally failed to report information within its knowledge to federal and state authorities, its dealerships, or consumers.

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

B. Fraudulent Concealment Tolling

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

125. Instead of disclosing its emissions scheme, or that the emissions from the Affected Vehicles were far worse than represented, 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.

C. Estoppel

126. Volkswagen was under a continuous duty to disclose to Plaintiffs and the other Class members the true character and quality of the Affected Vehicles.

127. Volkswagen was also under a continuous duty to disclose to Plaintiffs and other Class members that it had engaged in the scheme complained of herein to evade applicable

federal and state emissions and clean air standards, and that it systematically and deliberately flouted its compliance with those standards and other federal and state law.

128. Volkswagen instead knowingly, affirmatively and actively concealed the true nature, quality, and character of the Affected Vehicles and their unlawful emissions and emissions systems.

129. Based on the foregoing, Volkswagen is estopped from relying on any statutes of limitations or laches defense in this action.

ADDITIONAL FACTUAL ALLEGATIONS

130. Volkswagen intentionally designed and sold CleanDiesel cars that misled 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 thoughtful cars for people who cared about the environment, Volkswagen sold the expensive Affective Vehicles that produced pollution at orders of a magnitude well above federal and state regulations, and then intentionally and knowingly hid the truth about those cars.

A. Volkswagen Falsely Touted their Diesel Vehicles as Being Fuel Efficient and Good for the Environment

131. For years, Volkswagen has advertised its CleanDiesel 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.

132. Volkswagen's success is based in large part on promoting their diesel cars as "clean" and "green" vehicles. Indeed, being both highly efficient and "clean" are the

centerpieces of Volkswagen's diesel engine marketing campaign. "CleanDiesel" is in the very name of the vehicles about which Volkswagen lied.

133. Volkswagen's apparent concern for the environment is evident beyond just the model names and purported attributes of their vehicles. For example, on the "Environment" page of its website, Volkswagen Group of America states that it takes "environmental responsibility very seriously. When it comes to making our cars as green as possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world's cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives."

134. Volkswagen bolsters its apparent environmental bone fides by trumpeting the fact that the Audi A3 CleanDiesel TDI and Volkswagen Jetta CleanDiesel TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year, respectively.

135. Volkswagen also launched a "Think Blue" program, which they explained is part of its policy of being "more responsible on the road and more environmentally conscious – not just in our cars."

136. Beyond merely advertising, Volkswagen supported and directed a website to promote its "clean" diesel technology, www.clearlybetterdiesel.org, which says the technology reduces smog and "meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner."

137. Volkswagen goes for far as to use the tagline "Truth in Engineering" to promote its Audi brand:



138. Unfortunately for consumers who bought Volkswagen's cars and for people who breathe the air into which Volkswagen's CleanDiesel cars emit extraordinary amounts of pollutants, Volkswagen's engineering was far from "truthful." Volkswagen has designed and sold cars that emit pollutants at levels that fail state and federal environmental regulations by incredible margins.

B. Volkswagen Intentionally Concealed the Excessive and Illegal Levels of Pollution Emitted from the Affected Vehicles

139. Contrary to Volkswagen's self-promotion as a "green" company, its CleanDiesel cars are unhealthy and unlawful.

140. On September 18, 2015, the EPA issued a Notice of Violation ("NOV"). The NOV explains that Volkswagen has installed sophisticated software in the Volkswagen and Audi CleanDiesel vehicles sold by Volkswagen in the United States that detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test. At all other times that the vehicle is running, however, the emissions controls are deactivated, meaning that pollution is freely released into the environment at levels that exceed those allowed by federal and state clean air regulators. This software produced and used by Volkswagen is a "defeat device" as defined by the Clean Air Act.

141. Most modern engines, including Volkswagen's CleanDiesel engines, use computerized engine control systems to monitor sensors throughout a car's engine and exhaust systems and control operation of the car's systems to ensure optimal performance and efficiency. These functions can include controlling fuel injection, valve and ignition timing, and, as in Volkswagen's "CleanDiesel" engines, operating 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, amount of air flowing into the engine, and engine temperature.

142. 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. That data provides a measure of the engine's operation and efficiency, and is thus used by the engine control computer in operating the car's systems to ensure the desired performance and efficiency.

143. 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 exhaust sensors during the testing procedure to measure the substances emitted. Some states, instead of or in addition to an OBD II device, use a measurement probe inserted into the car's exhaust pipe to measure the chemicals emitted.

144. Volkswagen programmed the engine control computers in the Affected 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.

145. In short, this software allows Volkswagen’s diesel vehicles to meet emissions standards in labs or state testing stations, while permitting the vehicles to emit NO_x at *up to 40 times the standard* allowed under United States laws and regulations during the normal operation of the vehicles.

146. NO_x 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 illness 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 illness are at an acute risk of health effects from these pollutants.

147. 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. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions than were certified to the EPA, Volkswagen violated the Clean Air Act, defrauded its customers, and engaged in unfair competition under state and federal laws.

C. Volkswagen Has Greatly Profited from its Defective Diesel Vehicles

148. Volkswagen charges substantial premiums for the Affected Vehicles. For example, for the 2015 Volkswagen Jetta, the base S model with a gasoline engine has a starting MSRP of \$18,780. The base TDI S CleanDiesel, however, has a starting MSRP of \$21,640, a price premium of \$2,860. The CleanDiesel premium for the highest trim Jetta models with a comparable gasoline engine is substantially higher: The Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL MSRP is \$26,410, a 31% premium.

149. These premiums occur across all of the vehicles in which Volkswagen installed its “defeat device” for emissions testing. The table below sets forth the price premium for each comparable base, mid-level, and top-line trim for each affected model:

CleanDiesel Price Premiums

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

D. Volkswagen’s Unlawful and Deceptive Actions Have Caused Class Members Significant Harm

150. Although the EPA has ordered Volkswagen to recall the Affected Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation, purchasers of the Affected Vehicles have and will continue to suffer significant harm. First, it is highly unlikely that Volkswagen will be able to make the Affected Vehicles comply with emissions standards without substantially degrading their performance characteristics, including their horsepower and their efficiency. As a result, even if Volkswagen is able to make

Class members' Affected 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.

151. Second, this deceptive conduct will necessarily result in a diminution in value of every Affected Vehicle. Not only did Class members pay too much for cars now worth substantially less, but they will end up paying more in fuel for their less efficient cars over the years they own their vehicles.

152. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business practices, and its failure to disclose that under normal operating conditions the Affected Vehicles emit up to 40 times the allowed levels, owners and/or lessees of the Affected Vehicles have suffered losses in money and/or property.

153. Had Plaintiffs and Class members known of the "defeat device" at the time they purchased or leased their Affected Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Even if Volkswagen recalls the Affected Vehicles and degrades the CleanDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiffs and Class members will be required to spend more on fuel and will not benefit from the performance qualities of their vehicles as advertised. Moreover, Affected Vehicles will necessarily be worth less in the used marketplace because of their decrease in performance and efficiency, which means that owners of Affected Vehicles will not be able to recoup nearly as much value in the future.

154. Volkswagen's deliberate strategy to value profit over the truth, human health, and the environment, has caused serious harm to consumers nationwide.

E. In the Wake of a Federal Criminal Probe, Volkswagen Has Begun to Admit and Reveal the True Scope and Costs of Its Fraudulent Scheme

155. On September 21, 2015, *The Wall Street Journal* reported that the U.S. Department of Justice, through its Environmental and Natural Resources Division, is conducting a criminal probe of Volkswagen over its alleged cheating on U.S. emissions tests. In addition, Volkswagen AG's CEO Winterkorn stated that the company has commissioned an external probe into the matter.

156. According to an online media report by Bloomberg *Business* on September 21, 2015, Volkswagen's top U.S. executive, Horn, has publicly admitted to the company's wrongdoing in connection with the diesel-emissions cheating scandal. During a corporate event in Brooklyn, New York on the evening of September 20, 2015, Horn made the astonishing revelation: "Our company was dishonest with the EPA, and the California Air Resources Board and with all of you." Horn further characterized the Company's misconduct by stating, and arguably understating, that: "We have totally screwed up."

157. On September 22, 2015, *The New York Times* reported that Volkswagen has acknowledged that 11 million of its diesel cars worldwide were equipped with software that was used to cheat on emissions tests and that the Company has set aside the equivalent of half a year's profits – 6.5 billion euros, or about \$7.3 billion – to cover the costs associated with its conduct.

158. In conducting its own internal "investigation" into the emissions scandal, Volkswagen has reportedly focused on several of its key engineering and development personnel, including Ulrich Hackenberg, Audi's chief engineer, Wolfgang Hatz, developer of Porsche's Formula One and Le Mans racing engines, and Heinz-Jakob Neusser, head of

development at the VW brand. All three of those officials, and possibly others, have been “suspended”.

159. According to media sources, Volkswagen CEO Winterkorn, 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 vehicles with 2.0 liter diesel engines. In announcing his resignation on September 23, 2015, CEO Winterkorn acknowledged the company’s massive scheme to deceive: “I am shocked by the events of the past few days.... Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group.”

160. In addition, Volkswagen has sent form letters, dated September 29, 2015, to purchasers of Affected Vehicles that again acknowledges that the vehicles “do not comply with emissions standards” and admits to wrongdoing in connection with its emissions cheating scheme:

“I am writing you today to offer a personal and profound apology. Volkswagen has violated your trust. I understand and fully appreciate your anger and frustration. I would like you to know that we take full responsibility and are cooperating with all responsible agencies. I can also assure you that we are committed to making this right for you- and taking steps to prevent something like this from ever happening again.”

161. While Volkswagen’s recent “candor” about its obvious breach of trust may be notable, it does nothing to compensate Plaintiffs and Class members for the damages they have incurred as a result of Volkswagen fraudulent, egregious and outrageous misconduct. Worse yet, CEO Winterkorn’s comments only serve to divert attention to the corporate culture that led to that misconduct.

162. For example, an October 5, 2015 report in *The Wall Street Journal* recounted that for the past several years, Volkswagen had focused on a concerted strategy to expand its market share in the United States. As part of those efforts, Winterkorn gave U.S. executives a goal of more than tripling annual sales, to at least 800,000 vehicles, in a 10-year plan he set in 2008. Specifically, diesel-engine vehicles, which made up just 5% of the U.S. car market in 2007, became the centerpiece Volkswagen's growth strategy. While Volkswagen succeeded in ramping its market share, the supposed "clean diesel" technology that was touted and used by Volkswagen to achieve its market share has now been exposed as nothing more than a massive scam that has unlawfully polluted the environment and cheated Volkswagen's consumers.

CAUSES OF ACTION

COUNT I Fraud by Omission (Common Law)

163. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

164. Plaintiffs bring this claim on behalf of themselves, the Class and the Subclasses.

165. Volkswagen intentionally concealed and suppressed material facts concerning the quality and character of the Affected Vehicles. As alleged in this Complaint, Volkswagen engaged in deception to evade federal and state vehicle emissions standards by installing software designed to conceal those vehicle's actual emission of pollutants.

166. The software installed on the Affected Vehicles 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 Volkswagen intended, *i.e.*, the Affected Vehicles passed emissions certifications by way of deliberately induced false readings.

Reportedly, Volkswagen's deliberate deception resulted in noxious emissions from these vehicles of up to 40 times the applicable standards.

167. Plaintiffs and Class members were duped into purchasing or leasing the Affected Vehicles as a result of Volkswagen's material omissions regarding the true nature and quality of those vehicles and their emissions systems and Volkswagen's fraudulent use of emission defeat devices to achieve this fraud. Plaintiffs and Class members had no way of knowing of Volkswagen's omissions and the information that Volkswagen concealed.

168. Moreover, Volkswagen concealed and suppressed material facts concerning what is evidently the true culture of Volkswagen – 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 consumers and the public generally.

169. Necessarily, Volkswagen also took steps to ensure that its employees did not reveal the details of its deception to regulators or consumers, including Plaintiffs and Class members. Volkswagen did so in order to boost the reputations of its vehicles and to falsely assure purchasers and lessors of its vehicles, including certified previously owned vehicles, that Volkswagen is a reputable manufacturer that complies with applicable law, including federal and state clean air law and emissions regulations, and that its vehicles likewise comply with applicable laws and regulations.

170. Volkswagen's misleading omissions were material to consumers, both because they concerned the quality of the Affected 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 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 paid a premium for such supposedly eco-friendly vehicles.

171. Volkswagen had a duty to disclose the emissions deception it engaged in with respect to the Affected Vehicles because Volkswagen made representations concerning the engines and emissions of those vehicles, had detailed knowledge of the deception that were known and/or accessible only to Volkswagen, and had exclusive knowledge as to implementation and maintenance of its deception.

172. Volkswagen also had a duty to disclose because it made general affirmative representations about the qualities of its 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 its emissions deception, the actual emissions of its vehicles, its actual philosophy with respect to compliance with federal and state clean air law and emissions regulations, and its actual practices with respect to the vehicles at issue.

173. Having volunteered to provide information to Plaintiffs and the Class, Volkswagen had the duty to disclose the entire truth. These omitted and concealed facts were material because they directly affect the value of the Affected Vehicles purchased or leased by Plaintiffs 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. Volkswagen represented to Plaintiffs and Class members that they were purchasing CleanDiesel vehicles, and

certification testing appeared to confirm this – except that, secretly, Volkswagen had thoroughly subverted the testing process.

174. Volkswagen actively concealed and/or suppressed these material facts, in whole or in part, to pad and protect its profits and to avoid the perception that its 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 Volkswagen money, and it did so at the expense of Plaintiffs and Class members.

175. On information and belief, Volkswagen has still not made full and adequate disclosures, and continues to defraud Plaintiffs and Class members by concealing material information regarding the emissions qualities of its referenced vehicles and its emissions deception.

176. Plaintiffs 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 Volkswagen, 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. Plaintiffs' and Class members' actions were justified. Volkswagen was in exclusive control of the material facts, and such facts were not known to the public, Plaintiffs, or Class members.

177. Because of the concealment and/or suppression of the facts, Plaintiffs and Class members have sustained damages because they own vehicles that are diminished in value as a result 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

hundreds of thousands of Volkswagen- and Audi-branded vehicles and the serious issues engendered by Volkswagen's corporate policies. Had Plaintiffs and Class members been aware of Volkswagen's 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, Plaintiffs 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.

178. The value of Plaintiffs' and Class members' vehicles has diminished as a result of Volkswagen's fraudulent concealment of its emissions deception, which has greatly tarnished the Volkswagen and Audi brand names attached to Plaintiffs' and Class members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

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

180. 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 II
Breach of Contract
(Common Law)

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

182. Plaintiffs bring this claim on behalf of themselves, the Class and the Subclasses.

183. Volkswagen's misrepresentations and omissions alleged herein, including Volkswagen's failure to disclose the existence of the "defeat device" and/or defective design as alleged herein, caused Plaintiffs and the other Class members purchase or lease their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these Affected Vehicles, would not have purchased or leased these Affected 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, Plaintiffs and the other Class members overpaid for their Affected Vehicles and did not receive the benefit of their bargain.

184. Each and every 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 Affected Vehicles and by misrepresenting or failing to disclose the existence of the "defeat device" and/or defective design, including information known to Volkswagen rendering each Affected Vehicle less safe and emissions compliant, and thus less valuable, than vehicles not equipped with CleanDiesel engine systems and "defeat devices."

185. 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 III
Breach of Express Warranty
(Common Law)

186. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

187. Plaintiffs bring this claim on behalf of themselves, the Class and the Subclasses.

188. Volkswagen made numerous representations, descriptions, and promises to Plaintiffs and Class members regarding the performance and emission controls of its diesel vehicles.

189. Volkswagen, however, 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.

190. Plaintiffs and Class members reasonably relied on Volkswagen's representations in purchasing CleanDiesel vehicles. Those vehicles, however, did not perform as was warranted. Unbeknownst to Plaintiffs and Class members, 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.

191. 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 IV
Breach of Implied Warranty
(Common Law)

192. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

193. Plaintiffs bring this claim on behalf of themselves, the Class and the Subclasses.

194. Volkswagen made numerous representations, descriptions, and promises to Plaintiffs and Class members regarding the functionality of Volkswagen's CleanDiesel technology.

195. Plaintiffs and Class members reasonably relied on Volkswagen's representations in purchasing the Affected Vehicles.

196. As set forth throughout this Complaint, Volkswagen knew that its representations, descriptions and promises regarding its diesel engines were false.

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

198. Accordingly, the Affected Vehicles failed to conform to Volkswagen's implied warranty regarding their functionality.

199. 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, it is now clear, are worth far less than the price Plaintiffs and

Class members paid for them. Accordingly, Plaintiffs and the Class seek the relief described below.

COUNT V
Unjust Enrichment
(Common Law)

200. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

201. Plaintiffs bring this claim on behalf of themselves, the Class and the Subclasses.

202. Plaintiffs and members of the Class conferred a benefit on Volkswagen by, *inter alia*, using (and paying for) its vehicles.

203. Volkswagen has retained this benefit, and know of and appreciate this benefit.

204. Volkswagen was and continues to be unjustly enriched at the expense of Plaintiffs and Class members.

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

COUNT VI
Violation of Magnuson - Moss Act
(15 U.S.C. §§ 2301, *et seq.*)

206. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

207. Plaintiffs assert this claim on behalf of themselves and the Class.

208. This Court has jurisdiction to decide claims brought under 15 U.S.C. § 2301 by virtue of 28 U.S.C. § 1331.

209. Volkswagen's Affected Vehicles are a "consumer product," as that term is defined in 15 U.S.C. § 2301(1).

210. Plaintiffs and Class members are “consumers,” as that term is defined in 15 U.S.C. § 2301(3).

211. Volkswagen is a “supplier” and “warrantor” as those terms are defined in 15 U.S.C. § 2301(4) and (5).

212. 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.

213. Volkswagen provided Plaintiffs and Class members with “implied warranties,” as that term is defined in 15 U.S.C. § 2301(7).

214. Volkswagen has breached these implied warranties as described in more detail above. Without limitation, Volkswagen’s Affected Vehicles are defective, as described above, which resulted in the problems and failures also described above.

215. 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 allegation of this Complaint as if fully restated here.

216. Volkswagen has breached these implied warranties as described in more detail above. Without limitation, Volkswagen’s Affected Vehicles are defective, as described above, which resulted in the problems and failures also described above.

217. 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.

218. In its 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 and any such effort to disclaim, or otherwise limit, liability for the defective the software and supporting systems is null and void.

219. All jurisdictional prerequisites have been satisfied.

220. Plaintiffs and members of the Class are in privity with Volkswagen in that they purchased the software from Volkswagen or its agents.

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

222. Plaintiffs Nicole Pin Mazza and Trevar Mazza (together, the "California Plaintiffs") incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

223. The California Plaintiffs assert this claim on behalf of themselves and the other members of the California Subclass.

224. California's Unfair Competition Law ("California UCL") proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

225. Volkswagen's conduct, as described herein, was and is in violation of California UCL. Volkswagen's conduct violates the UCL in at least the following ways:

- a. By knowingly and intentionally concealing from Plaintiffs and the other California Subclass members that the Affected Vehicles suffer from a design defect while obtaining money from Plaintiffs and the Class;

- b. By marketing Affected Vehicles as possessing functional and defect-free, EPA-compliant CleanDiesel engine systems;
- c. By purposefully installing an illegal “defeat device” in the Affected Vehicles to fraudulently obtain EPA certification and cause Affected Vehicles to pass emissions tests when in truth and fact they did not pass such tests;
- d. By violating federal laws, including the Clean Air Act; and
- e. By violating other California laws, including California laws governing vehicle emissions and emission testing requirements.

226. Volkswagen participated in misleading, false, or deceptive acts that violated the California UCL. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the California UCL.

227. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

228. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

229. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles

throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

230. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the California UCL.

231. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

232. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including the California Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

233. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead the California Plaintiffs and the California Subclass.

234. Volkswagen knew or should have known that its conduct violated the California UCL.

235. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

236. Volkswagen owed the California Plaintiffs and California Subclass Members a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from the California Plaintiffs and the California Subclass; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from the California Plaintiffs and the California Subclass that contradicted these representations.

237. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

238. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to the California Plaintiffs and the California Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

239. The California Plaintiffs and the California Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

240. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the California UCL. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

241. Volkswagen's violations present a continuing risk to the California Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

242. As a direct and proximate result of Volkswagen's violations of the California UCL, the California Plaintiffs and the California Subclass have suffered injury-in-fact and/or actual damage.

243. Pursuant to Cal. Bus. & Prof. Code § 17203, the California Plaintiffs and the California Subclass seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Volkswagen and any other just and proper relief available under the California UCL.

COUNT VIII
Violation of California Consumers Legal Remedies Act
(Cal. Civ. Code §§ 1750, *et seq.*)

244. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

245. The California Plaintiffs assert this claim on behalf of themselves and the other members of the California Subclass.

246. The purpose of California’s Consumers Legal Remedies Act (“California CLRA”) is to protect consumers from “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.” Cal. Civ. Code § 1770.

247. The Affected Vehicles are “goods” as defined in Cal. Civ. Code § 1761(a).

248. Plaintiffs and the other California Subclass members are “consumers” as defined in Cal. Civ. Code § 1761(d).

249. Volkswagen, the California Plaintiffs, and California Subclass Members, are “persons” as defined in Cal. Civ. Code § 1761(d).

250. The sale of the Affected Vehicles to the California Plaintiffs and the California Subclass are “transactions” within the meaning of Cal. Civ. Code § 1761(e).

251. Unfair or deceptive acts or practices under California CLRA include:

- a. “(2) Misrepresenting the . . . approval, or certification of goods or services.”

- b. “(5) Representing that goods or services have . . . characteristics, ingredients, uses, benefits, or quantities which they do not have . . .”
- c. “(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”
- d. “(9) Advertising goods or services with intent not to sell them as advertised.”
- e. “(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.”

Cal. Civ. Code § 1770(a).

252. Volkswagen participated in misleading, false, or deceptive acts that violated the California CLRA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the California CLRA.

253. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

254. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

255. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

256. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the California CLRA.

257. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

258. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including the California Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

259. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead the California Plaintiffs and the California Subclass.

260. Volkswagen knew or should have known that its conduct violated the California CLRA.

261. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

262. Volkswagen owed the California Plaintiffs and California Subclass Members a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because

Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from the California Plaintiffs and the California Subclass; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from the California Plaintiffs and the California Subclass that contradicted these representations.

263. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished.

In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

264. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to the California Plaintiffs and the California Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

265. The California Plaintiffs and the California Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

266. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the California CLRA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

267. Volkswagen's willful violations present a continuing risk to the California Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

268. As a direct and proximate result of Volkswagen's violations of the California CLRA, the California Plaintiffs and the California Subclass have suffered injury-in-fact and/or actual damage.

269. In accordance with Cal. Civ. Code § 1780(d), the California Plaintiffs and members of the Class seek injunctive relief for Volkswagen’s violations of the California CLRA.

270. While the California Plaintiffs does not seek to recover damages under the California CLRA in this initial Complaint, after mailing appropriate notice and demand in accordance with Cal. Civ. Code §§ 1782(a) & (d), the California Plaintiffs will subsequently amend this Complaint to also include a request for compensatory and punitive damages.

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

271. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

272. The California Plaintiffs assert this claim on behalf of themselves and the other members of the California Subclass.

273. California’s False Advertising Law (“California FAL”) prohibits:

“any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated . . .any statement, concerning that real or personal property . . . or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property . . .”

Cal. Bus. & Prof. Code § 17500.

274. Further, California FAL makes it “unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading

advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.” Cal. Bus. & Prof. Code § 17508.

275. Volkswagen engaged in unlawful advertising practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

276. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

277. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in false advertising in violation of the California FAL.

278. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the fraud by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

279. Volkswagen's fraudulent statements and misrepresentations were likely to and did in fact deceive and induce reasonable consumers, including the California Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

280. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead and induce the California Plaintiffs and the California Subclass.

281. Volkswagen knew or should have known that its conduct violated the California FAL.

282. As alleged above, Volkswagen made material misrepresentations and fraudulent statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

283. Volkswagen owed the California Plaintiffs and California Subclass Members a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from the California Plaintiffs and the California Subclass; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the "defeat device" and true nature of the CleanDiesel engine system in particular, while purposefully

withholding material facts from the California Plaintiffs and the California Subclass that contradicted these representations.

284. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

285. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to the California Plaintiffs and the California Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

286. The California Plaintiffs and the California Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

287. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from fraudulent statements or misrepresentations under the California FAL. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen’s fraudulent statements or misrepresentations made in the course of Volkswagen’s business.

288. As a direct and proximate result of Volkswagen's violations of the California FAL, the California Plaintiffs and the California Subclass have suffered injury-in-fact and/or actual damage. The California Plaintiffs and the California Subclass Members seek injunctive relief against Volkswagen from continuing their deceptive practices, fraudulent statements, and misrepresentations, economic relief for the California Plaintiffs and the California Subclass Members for Volkswagen's violations of the California FAL, and for such other just and proper relief available under the California FAL.

COUNT X
Violation of the Florida Deceptive & Unfair Trade Practices Act
(Fla. Stat. §§ 501.201, *et seq.*)

289. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

290. Plaintiff McIntosh brings this Count on behalf of herself and the Florida Subclass.

291. Plaintiffs are "consumers" within the meaning of Florida Unfair and Deceptive Trade Practices Act, Fla. Stat. § 501.203(7).

292. Volkswagen engaged in "trade or commerce" within the meaning of Fla. Stat. § 501.203(8).

293. Florida's Deceptive and Unfair Trade Practices Act prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.204(1). Volkswagen participated in unfair and deceptive trade practices that violated the FDUTPA as described herein.

294. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed that the CleanDiesel engine system was non-EPA compliant, and the use of the "defeat device" in Affected Vehicles as described above. Accordingly, Volkswagen engaged in

unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in Fla. Stat. § 501.204(1), including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

295. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

296. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

297. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

298. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a

reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the FDUTPA.

299. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

300. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff McIntosh, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

301. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff McIntosh and the Florida Subclass.

302. Volkswagen knew or should have known that its conduct violated the FDUTPA.

303. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

304. Volkswagen owed Plaintiff McIntosh and the other members of the Florida Subclass a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected

Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiffs that contradicted these representations.

305. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

306. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff McIntosh and the Florida Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

307. Plaintiff McIntosh and the Florida Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material

information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

308. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the FDUTPA. All owners of Affected Vehicles suffered ascertainable loss in the form of diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

309. Volkswagen's violations present a continuing risk to Plaintiff McIntosh as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

310. As a direct and proximate result of Volkswagen's violations of the FDUTPA, Plaintiff McIntosh and the Florida Subclass have suffered injury-in-fact and/or actual damage.

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

312. Plaintiff McIntosh and the other Florida Subclass members were injured as a result of Volkswagen's conduct in that Plaintiff McIntosh and the other Florida Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Volkswagen's misrepresentations and omissions.

COUNT XI
Violation of the Kansas Consumer Protection Act
(Kan. Stat. Ann. §§ 50-623, *et seq.*)

313. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

314. Plaintiff Lehman asserts this claim on behalf of himself and the other members of the Kansas Subclass.

315. The Kansas Consumer Protection Act (“Kansas CPA”) states “[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction.” Kan. Stat.

Ann. § 50-626(a). Deceptive acts or practices include:

- a. knowingly making representations or with reason to know that
 - i. “(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;” and
 - ii. “(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;”
- b. “the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;” and
- c. “the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.”

Kan. Stat. Ann. § 50-626(b).

316. The Kansas CPA also provides that “[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction.” Kan. Stat. Ann. § 50-627(a).

317. Kansas Subclass Members are “consumers,” within the meaning of Kan. Stat. Ann. § 50-624(b), who purchased or leased one or more Affected Vehicles.

318. Volkswagen is a “supplier” pursuant to Kan. Stat. Ann. § 50-624(l).

319. The sale of the Affected Vehicles to the Kansas Subclass Members was a “consumer transaction” within the meaning of Kan. Stat. Ann. § 50-624(c).

320. Volkswagen participated in misleading, false, or deceptive acts that violated the Kansas CPA. By fraudulently installing the “defeat device” to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Kansas CPA.

321. Volkswagen also engaged in unlawful trade practices by:

- a. representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have;
- b. representing that the Affected Vehicles are of a particular standard and quality when they are not;
- c. advertising the Affected Vehicles with the intent not to sell them as advertised;
- d. willfully using, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;
- e. willfully failing to state a material fact, or the willfully concealing, suppressing or omitting a material fact; and
- f. otherwise engaging in an unconscionable act or practice in connection with a consumer transaction.

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

323. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

324. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

325. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

326. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Kansas CPA.

327. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

328. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff Lehman and the Kansas Subclass, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen

and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

329. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff Lehman and the Kansas Subclass.

330. Volkswagen knew or should have known that its conduct violated the Kansas CPA.

331. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

332. Volkswagen owed Plaintiff Lehman a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiff Lehman; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiff Lehman that contradicted these representations.

333. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished.

In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

334. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff Lehman and the Kansas Subclass. A vehicle made by a reputable manufacturer of safe vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than promptly remedying them.

335. Plaintiff Lehman and the Kansas Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

336. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Kansas CPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

337. Volkswagen's violations present a continuing risk to Plaintiff Lehman as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

338. As a direct and proximate result of Volkswagen's violations of the Kansas CPA, Plaintiff Lehman and the Kansas Subclass have suffered injury-in-fact and/or actual damages.

339. Pursuant to Kan. Stat. Ann. § 50-6340(d), Plaintiff Lehman and the Kansas Subclass seek monetary relief against Volkswagen.

340. Plaintiff Lehman also seeks an order enjoining Volkswagen's unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Kansas CPA. *See* Kan. Stat. Ann. §§ 50-6340(c) and (e).

COUNT XII
Violation of the Maryland Consumer Protection Act
(Md. Code Ann. Com. §§ 13-101, *et seq.*; §§ 14-2001, *et seq.*)

341. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

342. Plaintiff Handy asserts this claim on behalf of herself and the other members of the Maryland Subclass.

343. The Maryland Consumer Protection Act ("Maryland CPA") provides that a person may not engage in any unfair or deceptive trade practice in the sale or lease of any consumer good. *See* Md. Code Com. Law §§ 13-303 and 14-2003(a).

344. Volkswagen participated in misleading, false, or deceptive acts that violated the Maryland CPA. By fraudulently installing the "defeat device" to make it appear that its CleanDiesel engine systems complied with EPA regulations, Volkswagen engaged in deceptive business practices prohibited by the Maryland CPA.

345. Volkswagen is a "merchant" and a "lessor" within the meaning of Md. Code Ann. Com. §§ 13-101(g) and 14-2001(i), respectively.

346. Plaintiff Handy and the Maryland Subclass Members are "consumers" and/or "lessees" within the meaning of Maryland CPA. *See* Md. Code Ann. Com. §§ 13-101(c) and 14-2001(h), respectively.

347. The Affected Vehicles are "consumer goods" and "motor vehicles" within the meaning of Md. Code Ann. Com. §§ 13-101(d) and 14-2001(k), respectively.

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

349. In the course of its business, Volkswagen installed the "defeat device" and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

350. Volkswagen has known of its use of the "defeat device" and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

351. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

352. By failing to disclose and by actively concealing the "defeat device" and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the Maryland CPA.

353. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

354. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff Handy, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

355. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff Handy and the Maryland Subclass.

356. Volkswagen knew or should have known that its conduct violated the Maryland CPA.

357. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

358. Volkswagen owed Plaintiff Handy and Maryland Subclass Members a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing,

selling and distributing vehicles throughout the United States that did not comply with EPA regulations;

- b. Intentionally concealed the foregoing from Plaintiff Handy and the Maryland Subclass; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiff Handy and the Maryland Subclass that contradicted these representations.

359. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

360. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff Handy and the Maryland Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

361. Plaintiff Handy and the Maryland Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Class members who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

362. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Maryland CPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

363. Volkswagen's violations present a continuing risk to Plaintiff Handy as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

364. As a direct and proximate result of Volkswagen's violations of the Maryland CPA, Plaintiff Handy and the Maryland Subclass have suffered injury-in-fact and/or actual damage.

365. Pursuant to Md. Code Com. Law §§ 13-408 and 14-2007, Plaintiff Handy and the Maryland Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

COUNT XIII
Violation of Missouri Merchandising Practices Act
(Mo. Rev. Stat. §§ 407.010, *et seq.*)

366. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

367. Plaintiff Johnston asserts this claim on behalf of herself and the other members of the Missouri Subclass.

368. The Missouri Merchandising Practices Act ("Missouri MPA") makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense,

misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise.” Mo. Rev. Stat. § 407.020.

369. Plaintiff Johnston and the Missouri Subclass Members are “consumers” within the meaning of Mo. Code Regs. Ann. tit.15, §§ 60-8.010(1)(B) and 60-9.010(1)(B).

370. The Affected Vehicles are “merchandise” within the meaning of Mo. Rev. Stat. § 407.010(4).

371. The sale of the Affected Vehicles to the Missouri Subclass Members was a “sale” within the meaning of Mo. Rev. Stat. § 407.010(6).

372. Volkswagen, Plaintiff Johnston and the Missouri Subclass are “persons” within the meaning of Mo. Rev. Stat. § 407.010(5).

373. Volkswagen engaged in “trade” or “commerce” in the State of Missouri within the meaning of Mo. Rev. Stat. § 407.010(7).

374. In the course of its business, Volkswagen environmental laws and regulations and, omitted, suppressed, and concealed its use of the “defeat device” as described herein. By failing to disclose these defects or facts about the defects described herein known to it or that were available to Volkswagen upon reasonable inquiry, Volkswagen deprived consumers of all material facts about the safety and functionality of their vehicle. By failing to release material facts about the defect, Volkswagen curtailed or reduced the ability of consumers to take notice of material facts about their vehicle, and/or it affirmatively operated to hide or keep those facts from consumers. *See* Mo. Code Regs. Ann. tit.15, § 60-9.110.

375. Moreover, Volkswagen has otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, unfair practices, and/or

concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

376. Volkswagen has known of its use of the “defeat device” and the true characteristics of its CleanDiesel engine system, but suppressed and/or concealed all of that information until recently.

377. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen omitted, suppressed, and/or concealed this information as well.

378. By failing to disclose and by actively concealing, suppressing, or omitting the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and/or deceptive business practices and concealed, suppressed, and/or omitted material facts from consumers in connection with the purchase of their vehicles – all in violation of the Missouri MPA.

379. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed, suppressed, and omitted the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable

manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

380. Volkswagen's unfair or deceptive acts or practices, including these concealments, omissions, and suppressions of material facts, had a tendency or capacity to mislead, tended to create a false impression in consumers, and did in fact deceive reasonable consumers, including Plaintiff Johnston, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

381. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff Johnston and the Missouri Subclass, including without limitation by failing to disclose the "defeat device" in light of circumstances under which the omitted facts were necessary in order to correct the assumptions, inferences or representations being made by Volkswagen about the safety, efficiency, cleanliness or reliability of its vehicles. Consequently, the failure to disclose such facts amounts to misleading statements pursuant to Mo. Code Regs. Ann. tit.15, § 60-9.090.

382. Because Volkswagen knew or believed that its statements regarding cleanliness, efficiency and reliability of its vehicles were not in accord with the facts and/or had no reasonable basis for such statements in light of its knowledge of these defects, Volkswagen engaged in fraudulent misrepresentations pursuant to Mo. Code Regs. Ann. tit.15, § 60-9.100.

383. Volkswagen's conduct as described herein is unethical, oppressive, or unscrupulous and/or it presented a risk of substantial injury to consumers whose vehicles were operating illegally and under circumstances that rendered them unsafe. Such acts are unfair practices in violation of Mo. Code Regs. Ann. tit.15, § 60-8.020.

384. Volkswagen knew or should have known that its conduct violated the Missouri MPA.

385. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles that were either false, misleading, and/or half-truths in violation of the Missouri MPA.

386. Volkswagen owed Plaintiff Johnston a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiff Johnston; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiff Johnston that contradicted these representations.

387. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, and committed these other unlawful acts in violation of the Missouri MPA, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

388. Volkswagen's misleading statements, deception, and/or concealment, suppression, or omission of the "defeat device" and true nature of the CleanDiesel engine system were material to Plaintiff Johnston and the Missouri Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

389. Plaintiff Johnston and the Missouri Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information. Class members who purchased Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

390. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Missouri MPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices made in the course of Volkswagen's business.

391. Volkswagen's violations present a continuing risk to Plaintiff Johnston the Missouri Subclass, and the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

392. As a direct and proximate result of Volkswagen's violations of the Missouri MPA, Plaintiff Johnston and the Missouri Subclass have suffered injury-in-fact and/or actual damage.

393. Volkswagen is liable to Plaintiff Johnston and the Missouri Subclass for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as

injunctive relief enjoining Volkswagen's unfair and deceptive practices, and any other just and proper relief under Mo. Rev. Stat. § 407.025.

COUNT XIV
Violation of the Nevada Deceptive Trade Practices Act
(Nev. Rev. Stat. Ann. §§ 598.0903, *et seq.*)

394. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

395. Plaintiff Schofield asserts this claim on behalf of himself and the other members of the Nevada Subclass.

396. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), Nev. Rev. Stat. Ann. §§ 598.0903, *et seq.* prohibits deceptive trade practices.

397. The Nevada DTPA provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person:

- a. "5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith";
- b. "7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model";
- c. "9. Advertises goods or services with intent not to sell or lease them as advertised"; or
- d. "15. Knowingly makes any other false representation in a transaction."

Nev. Rev. Stat. Ann. § 598.0915.

398. The Nevada DTPA also provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person:

- a. “2. Fails to disclose a material fact in connection with the sale or lease of goods or services”; or
- b. “3. Violates a state or federal statute or regulation relating to the sale or lease of goods or services.”

Nev. Rev. Stat. Ann. § 598.0923.

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

400. The Affected Vehicles are “goods” within the meaning of Nev. Rev. Stat. Ann. § 598.0934.

401. The transaction of the Affected Vehicles from Volkswagen to the Nevada Subclass members was a “sale” within the meaning of Nev. Rev. Stat. Ann. § 598.094.

402. Volkswagen engaged in deceptive trade practices that violated the Nevada DTPA, including: knowingly representing that Affected Vehicles have uses and benefits which they do not have; representing that Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and knowingly making other false representations in a transaction.

403. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that

others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

404. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

405. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

406. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Nevada DTPA.

407. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

408. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff Schofield, about the true cleanliness and

efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

409. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff Schofield and the Nevada Subclass.

410. Volkswagen knew or should have known that its conduct violated the Nevada DTPA.

411. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

412. Volkswagen owed Plaintiff Schofield a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiff Schofield; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiff Schofield that contradicted these representations.

413. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine

system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than they otherwise would be.

414. Volkswagen's fraudulent use of the "defeat device" and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff Schofield and the Nevada Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

415. Plaintiff Schofield and the Nevada Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

416. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Nevada DTPA.

417. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

418. Volkswagen's violations present a continuing risk to Plaintiff Schofield as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

419. As a direct and proximate result of Volkswagen's violations of the Nevada DTPA, Plaintiff Schofield and the Nevada Subclass have suffered injury-in-fact and/or actual damage.

420. Accordingly, Plaintiff Schofield and the Nevada Subclass seek their actual damages, punitive damages, an order enjoining Volkswagen's deceptive acts or practices, costs of Court, attorney's fees, and all other appropriate and available remedies under the Nevada DTPA. Nev. Rev. Stat. § 41.600.

421. A copy of this Complaint will be mailed to the State of Nevada in accordance with Nev. Rev. Stat. Ann. § 598.0997, as required.

COUNT XV
Violation of the New Jersey Consumer Fraud Act
(N.J. Stat. Ann. §§ 56:8-1, *et seq.*)

422. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

423. Plaintiffs Greenberg, Sellitto, Adelson, Libolts and Calicchios (collectively, the "New Jersey Plaintiffs") assert this claim on behalf of themselves and the other members of the New Jersey Subclass.

424. The New Jersey Consumer Fraud Act ("NJCFCA") protects consumers against "[t]he act, the use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise..." N.J. Stat. Ann. § 56:8-2.

425. The New Jersey Plaintiffs and the New Jersey Subclass are consumers who purchased and/or leased in the State of New Jersey Affected Vehicles for personal, family or household use.

426. The Affected Vehicles are “merchandise” within the meaning of N.J. Stat. Ann. § 56:8-1(c).

427. Volkswagen, the New Jersey Plaintiffs and the New Jersey Subclass Members are “persons” within the meaning of N.J. Stat. Ann. § 56:8-1(d).

428. The consumer transaction of the Affected Vehicles to the New Jersey Plaintiffs and the New Jersey Subclass Members was a “sale” within the meaning of N.J. Stat. Ann. § 56:8-1(e).

429. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

430. Accordingly, Volkswagen has engaged in unfair and deceptive trade practices, including representing that the Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Vehicles are of a particular standard and quality when they are not; advertising the Vehicles with the intent to not sell them as advertised in violation of N.J. Stat. Ann. § 56:8-2.2; and otherwise engaging in conduct likely to deceive in violation of N.J. Stat. Ann. § 56:8-2.

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

432. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

433. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

434. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the NJCFA.

435. Volkswagen’s unfair or deceptive acts or practices had the capacity to deceive reasonable consumers, including the New Jersey Plaintiffs and the New Jersey Subclass Members, about the true performance and characteristics of the CleanDiesel engine system.

436. Volkswagens’ conduct caused the New Jersey Plaintiffs and the New Jersey Subclass Members to suffer an ascertainable loss. In addition to direct monetary losses, the New Jersey Plaintiffs and Class members have suffered an ascertainable loss by receiving less than what was promised.

437. The New Jersey Plaintiffs and the New Jersey Subclass Members were injured as a result of Volkswagen’s conduct in that the New Jersey Plaintiffs and the New Jersey Subclass

Members overpaid for their Vehicles and did not receive the benefit of their bargain, they incurred costs for engine oil and repairs, and their Vehicles suffered a diminution in value.

438. A causal relationship exists between Volkswagens' unlawful conduct and the ascertainable losses suffered by the New Jersey Plaintiffs and the New Jersey Subclass. Had the defective vehicle design in the vehicles been disclosed, consumers would not have purchased them or would have paid less for the vehicles had they decided to purchase them.

439. Pursuant to N.J. Stat. Ann. § 56:8-20, the New Jersey Plaintiffs will serve the New Jersey Attorney General with a copy of this Complaint, as required.

COUNT XVI
Violation of New York General Business Law §§ 349, 350
(N.Y. Gen. Bus. Law §§ 349 *et seq.*, 350 *et seq.*)

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

441. Plaintiff Stocker brings this Count on behalf of themselves and the New York Subclass.

442. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce."

443. New York's General Business Law § 350 also makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce[.]" False advertising includes "advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in the light of ... representations [made] with respect to the commodity...." N.Y. Gen. Bus. Law § 350-a.

444. Volkswagen's representations, as alleged above, were and are material to a reasonable consumer and are likely to affect consumer behavior and conduct.

445. Volkswagen's act and practices offended public policy and violate numerous state and federal laws, including but not limited to the Clean Air Act.

446. Volkswagen's intentional deception of consumers and regulators is and was immoral, unethical, oppressive, and unscrupulous.

447. Volkswagen's conduct has caused and continues to cause substantial injury to Plaintiff Stocker, New York consumers, and others because, as alleged above, consumers paid a premium for Affected Vehicles based on representations about their low emissions, fuel efficiency, and performance. That injury is not outweighed by any countervailing public policy that could justify Volkswagen's deceptive practices.

448. Because Plaintiff Stocker and other members of the New York Subclass reasonably relied on Volkswagen's misrepresentations about the Affected Vehicles, they could not have reasonably avoided that injury.

449. Volkswagen's conduct has not resulted in any benefit to consumers or competition.

450. Volkswagen's unfair, deceptive practices and false advertising directly, foreseeably, and proximately caused Plaintiff Stocker and other members of the New York Subclass an ascertainable loss because those consumers paid a premium for what they thought were high-performance, low-emission vehicles.

COUNT XVII
Violation of the Ohio Consumer Sales Practices Act
(Ohio Rev. Code §§ 1345.01, *et seq.*)

451. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

452. Plaintiff Mohr asserts this claim on behalf of himself and the other members of the Ohio Subclass.

453. The Ohio Consumer Sales Practices Act (“OCSPA”) prohibits a supplier from committing “an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates [OCSPA] whether it occurs before, during, or after the transaction.” Ohio Rev. Code Ann. § 1345.02(A).

454. Plaintiff Mohr and the other Ohio Subclass members are “consumers” as defined by Ohio Rev. Code Ann. § 1345.01(D).

455. Volkswagen is a “supplier” as defined by the § 1345.01(C).

456. Plaintiff Mohr’s and the other Ohio Subclass Members’ purchases or leases of Affected Vehicles are “consumer transactions” as defined by § 1345.01(A).

457. By failing to disclose and actively concealing that the CleanDiesel engine systems were not EPA-compliant and used a “defeat device” in the Affected Vehicles, Volkswagen engaged in deceptive business practices prohibited by the OCSPA, including (1) representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Affected Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Affected Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer. *See* Ohio Rev. Code Ann. § 1345.02(B).

458. As alleged above, Volkswagen made numerous material statements about the benefits and characteristics of the CleanDiesel engine system that were either false or misleading. Each of these statements contributed to the deceptive context of Volkswagen's unlawful advertising and representations as a whole.

459. Volkswagen knew that the CleanDiesel engine system in the Affected Vehicles were defectively designed or manufactured, did not comply with EPA regulations and the Clean Air Act, and were not suitable for their intended use. Volkswagen nevertheless failed to warn Plaintiff about these defects despite having a duty to do so.

460. Volkswagen owed Plaintiff Mohr and Ohio Subclass Members a duty to disclose the defective nature of the CleanDiesel engine system in the Affected Vehicles, because Volkswagen:

- a. Possessed exclusive knowledge of the defects rendering the Affected Vehicles more unreliable than similar vehicles;
- b. Intentionally concealed the use and installation of the "defeat device" that Volkswagen that it designed to hide the defects in the CleanDiesel engine system; and/or
- c. Made incomplete representations about the characteristics and performance of the CleanDiesel engine system generally, while purposefully withholding material facts from Plaintiff that contradicted these representations.

461. Volkswagen's unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including Plaintiff Mohr and the Ohio Subclass Members, about the true performance and characteristics of the CleanDiesel engine system.

462. On numerous occasions, the Ohio state court have previously determined Volkswagen's acts and omissions as deceptive sales practices in violation of the OCSPA. These acts and omissions include, but not limited to, the failure to honor both implied warranties and

express warranties, the making and distribution of false, deceptive, and/or misleading representations, and the concealment and/or non-disclosure of a dangerous defect. The Ohio Attorney General has made available for public inspection those prior state court decisions, which include, but are not limited to, the following:

- a. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
- b. *State ex rel. Betty D. Montgomery v. Volkswagen Motor Co.* (OPIF #10002123);
- c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF #10002025);
- d. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
- e. *Borror v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);
- f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);
- g. *Mark J. Craw Volkswagen, et al. v. Joseph Airport Toyota, Inc.* (OPIF #10001586);
- h. *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF #10000304);
- i. *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);
- j. *Khouri v. Don Lewis* (OPIF #100001995);
- k. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF #10001326);
- l. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524); and
- m. *Brown v. Spears* (OPIF #10000403).

463. As a result of its violations of the OCSIPA, as detailed above, Volkswagen caused actual damage to Plaintiff Mohr and Ohio Subclass Members and, if not stopped, will continue to harm them. Plaintiff Mohr and Ohio Subclass Members currently own or lease, or within the

class period has owned or leased, an Affected Vehicle that is defective. Defects associated with the CleanDiesel engine system have caused the value of Affected Vehicles to decrease.

464. Plaintiff Mohr and Ohio Subclass Members have sustained damages as a result of Volkswagen's unlawful acts and are, therefore, entitled to damages and other relief as provided under the OCSPA, such as actual economic damages plus an amount not exceeding five thousand (\$5,000.00) dollars in noneconomic damages, and attorneys' fees and costs. *See* Ohio Rev. Code Ann. § 1345.09.

COUNT XVIII
Violation of the Pennsylvania Unfair Trade Practices
and Consumer Protection Law
(73 P.S. § 201-1, et seq.)

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

466. Plaintiffs Chiles and English (the "Pennsylvania Plaintiffs") assert this claim on behalf of themselves and the other members of the Pennsylvania Subclass.

467. The Pennsylvania Plaintiffs and the Pennsylvania Subclass purchased or leased their Affected Vehicles primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

468. All of the acts complained of herein were perpetrated by Volkswagen in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

469. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i) "Representing that goods or services have ... characteristics, [b]enefits or qualities that they do not have;" (ii) "Representing that goods or services are of a particular standard, quality or

grade ... if they are of another;” (iii) “Advertising goods or services with intent not to sell them as advertised;” and (iv) “Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” 73 P.S. § 201-2(4).

470. Volkswagen engaged in unlawful trade practices, including representing that Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Affected Vehicles are of a particular standard and quality when they are not; advertising Affected Vehicles with the intent not to sell them as advertised; and engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

471. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

472. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

473. Volkswagen valued profits over environmental cleanliness, efficiency, and lawfulness, and was aware that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

474. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in unfair and deceptive business practices in violation of the Pennsylvania CPL.

475. In the course of Volkswagen’s business, it willfully failed to disclose and actively concealed the use of the “defeat device” and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

476. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including the Pennsylvania Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

477. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead the Pennsylvania Plaintiffs and the Pennsylvania Subclass.

478. Volkswagen knew or should have known that its conduct violated the Pennsylvania CPL.

479. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

480. Volkswagen owed the Pennsylvania Plaintiffs a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from the Pennsylvania Plaintiffs; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from the Pennsylvania Plaintiffs that contradicted these representations.

481. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

482. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to the Pennsylvania Plaintiffs and the Pennsylvania Subclass. A vehicle made by a reputable manufacturer of environmentally

friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

483. The Pennsylvania Plaintiffs and the Pennsylvania Subclass suffered ascertainable loss caused by Volkswagen's misrepresentations and its concealment of and failure to disclose material information.

484. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Pennsylvania CPL. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

485. Volkswagen's violations present a continuing risk to the Pennsylvania Plaintiffs as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

486. As a direct and proximate result of Volkswagen's violations of the Pennsylvania CPL, the Pennsylvania Plaintiffs and the Pennsylvania Subclass have suffered injury-in-fact and/or actual damage.

487. Volkswagen is liable to the Pennsylvania Plaintiffs and the Pennsylvania Subclass for treble their actual damages or \$100, whichever is greater, and attorneys' fees and costs. *See* 73 P.S. § 201-9.2(a). The Pennsylvania Plaintiffs and the Pennsylvania Subclass are also entitled to an award of punitive damages given that Volkswagen's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

COUNT XIX
Violation of Utah Consumer Sales Practices Act
(Utah Code Ann. § 13-11-1, *et seq.*)

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

489. Plaintiff Stubbs asserts this claim on behalf of herself and the other members of the Utah Subclass.

490. Volkswagen is a “supplier” under the Utah Consumer Sales Practices Act (“Utah CSPA”), Utah Code Ann. § 13-11-3.

491. Plaintiff Stubbs and the other members of the Utah Subclass are “persons” under Utah Code Ann. § 13-11-3.

492. The sale of the Affected Vehicles to the members of the Utah Subclass was a “consumer transaction” within the meaning of Utah Code Ann. § 13-11-3.

493. The Utah CSPA makes unlawful any “deceptive act or practice by a supplier in connection with a consumer transaction” under Utah Code Ann. § 13-11-4. Specifically, “a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not” or “(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not.” Utah Code Ann. § 13-11-4. “An unconscionable act or practice by a supplier in connection with a consumer transaction” also violates the Utah CSPA. Utah Code Ann. § 13-11-5(1).

494. Volkswagen committed deceptive acts or practices in the conduct of trade or commerce, by, among other things, engaging in unconscionable acts, representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; and

representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not.

495. In the course of its business, Volkswagen installed the “defeat device” and concealed that its CleanDiesel engine systems failed EPA regulations as described herein and otherwise engaged in activities with a tendency or capacity to deceive. Volkswagen also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Affected Vehicles.

496. Volkswagen has known of its use of the “defeat device” and the true nature of its CleanDiesel engine system for at least six years, but concealed all of that information until recently.

497. Volkswagen was also aware that it valued profits over environmental cleanliness, efficiency and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations. Volkswagen concealed this information as well.

498. By failing to disclose and by actively concealing the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, by marketing its vehicles as safe, reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices in violation of the Utah CSPA.

499. In the course of Volkswagen's business, it willfully failed to disclose and actively concealed the use of the "defeat device" and true cleanliness and efficiency of the CleanDiesel engine system and serious defects discussed above. Volkswagen compounded the deception by repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient, and of high quality, and by claiming to be a reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

500. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen brand, the devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the Affected Vehicles.

501. Volkswagen intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff Stubbs and the other members of the Utah Subclass.

502. Volkswagen knew or should have known that its conduct violated the Utah CSPA.

503. As alleged above, Volkswagen made material statements about the safety, cleanliness, efficiency and reliability of the Affected Vehicles and the Volkswagen and Audi brands that were either false or misleading.

504. Volkswagen owed Plaintiff Stubbs and the other members of the Utah Subclass a duty to disclose the true safety, cleanliness, efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and integrity at Volkswagen, because Volkswagen:

- a. Possessed exclusive knowledge that it valued profits over environmental cleanliness, efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b. Intentionally concealed the foregoing from Plaintiff Stubbs and the other members of the Utah Subclass; and/or
- c. Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Affected Vehicles generally, and the use of the “defeat device” and true nature of the CleanDiesel engine system in particular, while purposefully withholding material facts from Plaintiff Stubbs and the other members of the Utah Subclass that contradicted these representations.

505. Because Volkswagen fraudulently concealed the “defeat device” and the true cleanliness and performance of the CleanDiesel engine system, resulting in a raft of negative publicity once the use of the “defeat device” and true characteristics of the CleanDiesel engine system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Volkswagen’s conduct, they are now worth significantly less than they otherwise would be.

506. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff Stubbs and the other members of the Utah Subclass. A vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the amount its cars pollutes rather than make environmentally friendly vehicles.

507. Plaintiff Stubbs and the other members of the Utah Subclass suffered ascertainable loss caused by Volkswagen’s misrepresentations and its concealment of and failure to disclose material information. Plaintiff Stubbs and the other members of the Utah Subclass

who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

508. Volkswagen had an ongoing duty to all Volkswagen and Audi customers to refrain from unfair and deceptive acts or practices under the Utah CSPA. All owners of Affected Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Volkswagen's deceptive and unfair acts and practices that occurred in the course of Volkswagen's business.

509. Volkswagen's violations present a continuing risk to Plaintiff Stubbs and the other members of the Utah Subclass as well as to the general public. Volkswagen's unlawful acts and practices complained of herein affect the public interest.

510. As a direct and proximate result of Volkswagen's violations of the Utah CSPA, Plaintiff Stubbs and the other members of the Utah Subclass have suffered injury-in-fact and/or actual damage.

511. Pursuant to Utah Code Ann. § 13-11-4, Plaintiff Stubbs and the other members of the Utah Subclass seek monetary relief against Volkswagen measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$2,000 for each members of the Utah Subclass, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.

COUNT XX
Violation of Wisconsin Deceptive Trade Practices Act ("WDTPA")
(Wis. Stat. § 110.18 *et seq.*)

512. Plaintiffs incorporate by reference each and every prior and subsequent allegations of this Complaint as if fully restated here.

513. Plaintiff Hurt asserts this claim on behalf of himself and the other members of the Wisconsin Subclass.

514. The WDTPA declares prohibits a “representation or statement of fact which is untrue, deceptive or misleading.” Wis. Stat. § 100.18(1).

515. Plaintiff Hurt and the other members of the Wisconsin Subclass are the public” as defined by Wis. Stat. § 100.18(1).

516. Volkswagen is a “person, firm, corporation or association” within the meaning of Wis. Stat. § 100.18(1).

517. Volkswagen’s representations, as alleged above, were and are material to a reasonable consumer and are likely to affect consumer behavior and conduct.

518. Volkswagen’s act and practices offended public policy and violate numerous state and federal laws, including but not limited to the Clean Air Act.

519. Volkswagen’s intentional deception of consumers and regulators is and was immoral, unethical, oppressive, and unscrupulous.

520. Volkswagen’s conduct has caused and continues to cause substantial injury to Plaintiff Hurt, Wisconsin consumers, and others because, as alleged above, consumers paid a premium for Affected Vehicles based on representations about their low emissions, fuel efficiency, and performance. That injury is not outweighed by any countervailing public policy that could justify Volkswagen’s deceptive practices.

521. Because Plaintiff Hurt and other members of the Wisconsin Subclass reasonably relied on Volkswagen’s misrepresentations about the Affected Vehicles, they could not have reasonably avoided that injury.

522. Volkswagen's conduct has not resulted in any benefit to consumers or competition.

523. Volkswagen's unfair and deceptive practices directly, foreseeably, and proximately caused Plaintiff and members of the Wisconsin Subclass an ascertainable loss because those consumers paid a premium for what they thought were high-performance, low-emission vehicles.

524. Plaintiff also seeks court costs and attorneys' fees as a result of Volkswagen's violation of the WDTA as provided in Plaintiff and the Wisconsin Subclass are entitled to damages and other relief provided for under Wis. Stat. § 100.18(11)(b)(2).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Class and Subclasses, respectfully request that the Court enter judgment in their favor and against Volkswagen, as follows:

- A. Certification of the proposed Class and Subclasses, including appointment of Plaintiffs' undersigned 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, including treble and punitive damages, and disgorgement in an amount to be determined at trial;
- E. An order requiring Volkswagen to pay both pre- and post-judgment interest on any amounts awarded;
- F. An award of costs and attorneys' fees; and

G. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims and issues so triable.

Dated: October 8, 2015

Respectfully submitted,

BERGER & MONTAGUE, P.C.



Sherrie R. Savett
Shanon J. Carson
Russell D. Paul (N.J. Atty. No. 037411989)
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Attorneys for Plaintiffs and the Proposed Class

EXHIBIT A



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

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

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

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

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

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate Volkswagen AG, Audi AG, and Volkswagen Group of America (collectively, VW) for compliance with the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that VW manufactured and installed defeat devices in certain model year 2009 through 2015 diesel light-duty vehicles equipped with 2.0 liter engines. These defeat devices bypass, defeat, or render inoperative elements of the vehicles' emission control system that exist to comply with CAA emission standards. Therefore, VW violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). Additionally, the EPA has determined that, due to the existence of the defeat

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

Law Governing Alleged Violations

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

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

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

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

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

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

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

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

Alleged Violations

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

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

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

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

VW's "road calibration" and "switch" are AECDS¹ that were neither described nor justified in the applicable COC applications, and are illegal defeat devices. Therefore each vehicle identified by the table below does not conform in a material respect to the vehicle specifications described in the COC application. As such, VW violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) one of the hundreds of thousands of new motor vehicles within these test groups. Additionally, VW

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

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

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

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

Enforcement

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

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

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

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

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

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

Sincerely,



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

Copy:

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

EXHIBIT B

ARB LETTER TO VW



Matthew Rodriguez
Secretary for
Environmental Protection

Air Resources Board

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



Edmund G. Brown Jr.
Governor

Reference No. IUC-2015-007

September 18, 2015

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

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

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

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

Dear Mr. Geanacopoulos and Mr. Johnson:

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

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

California Environmental Protection Agency

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

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

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

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

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

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

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

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

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

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

Sincerely,



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

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

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

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

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

California Environmental Protection Agency

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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

Alan Greenberg, et al. (see attached)

DEFENDANTS

Volkswagen Group of America, Inc., Volkswagen of America, Inc., Audi AG, Audi of America, LLC and Volkswagen AG

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

County of Residence of First Listed Defendant Fairfax County, VA
(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, Email and Telephone Number)
Lane L. Vines, Berger & Montague, P.C., 1622 Locust Street, Philadelphia, PA 19103, lvines@bm.net, (215) 875-3000

Attorneys (If Known)

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

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input 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
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<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	<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	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

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):
Class Action Fairness Act ("CAFA"), 28 U.S.C. Section 1332(d)
 Brief description of cause:
Fraud, breach of contract and breach of implied and express warranty

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 Jose L. Linares DOCKET NUMBER Volkswagen Diesel Emission

DATE 10/08/2015 SIGNATURE OF ATTORNEY OF RECORD

James J. Vines

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

PLAINTIFFS AND COUNTY OF RESIDENCE

Alan Greenberg	–	Monmouth County, NJ
Salvatore Sellitto	–	Ocean County, NJ
Keith Adelsohn	–	Bergen County, NJ
Carmella Libolt	–	Ocean County, NJ
Kenneth Calicchio	–	Ocean County, NJ
Lorryn Calicchio	–	Ocean County, NJ
Nicole Pin Mazza	–	Alameda County, CA
Trevar Mazza	–	Alameda County, CA
Constance McIntosh	–	Palm Beach, FL
Robert Lehman	–	Butler County, KS
Elizabeth Handy	–	Baltimore City County, MD
Sally Johnston	–	St. Louis County, MO
Roger Schofield	–	Clark County, NV
Raymond Stocker	–	Nassau County, NY
George Mohr	–	Portage County, OH
Walter Chiles	–	Montgomery County, PA
Connor English	–	Montgomery County, PA
Jolene Stubbs	–	Utah County, UT
Jeffrey Hurt	–	Ozaukee County, WI