

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MARYLAND**

**MICHAEL C. HOFFMAN, individually and on behalf of all others similarly situated,**  
126 Sumner Road  
Annapolis, Maryland 21401

and

**MICHELLE M. KRAM, individually and on behalf of all others similarly situated,**  
710 Kirkcaldy Way  
Abingdon, Maryland 21009

Plaintiffs,

v.

**VOLKSWAGEN GROUP OF AMERICA, INC.**  
2200 Ferdinand Porsche Drive  
Herndon, Virginia, 20171

Serve On: Resident Agent  
CSC-Lawyers Incomp. Serv. Co.  
7 St. Paul Street, Suite 820  
Baltimore, Maryland 21202

and

**AUDI OF AMERICA, INC.**  
Corporation Trust Incorporated  
32 South Street  
Baltimore, Maryland 21202

Defendant.

Case No. \_\_\_\_\_

Class Action Complaint

Demand For Jury Trial

**INTRODUCTION**

1. This action seeks relief on behalf of Plaintiff Michael C. Hoffman, Plaintiff Michelle M. Kram and a class of Maryland residents who are owners or lessees of Audi diesel vehicles he seeks to represent. Volkswagen defrauded Maryland residents by selling them so-called “clean diesel” vehicles that it represented to be less polluting than standard vehicles, but in

fact emitted much greater amounts of greenhouse gases than other vehicles. Volkswagen purposely designed these vehicles to circumvent emissions testing to hide their true levels of toxic output.

#### **PARTIES**

2. Plaintiff Michael C. Hoffman is an individual residing in Annapolis, Maryland.
3. Plaintiff Michelle M. Kram an individual residing in Abingdon, Maryland.
4. Volkswagen Group of America, Inc. is a corporation doing business in all 50 states and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171.
5. Audi of America, Inc. is a “fictitious name” of Volkswagen Group of America, Inc.
6. Collectively, Defendants shall be referred to herein as “Volkswagen.”
7. At all times relevant to this action, Volkswagen manufactured, distributed, sold, leased, and warranted the affected vehicles under the Volkswagen and Audi brand names throughout the United States and to consumers in Maryland.

#### **JURISDICTION**

8. This Court has jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Maryland Consumer Class (or “Class,” as defined herein) comprises 100 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

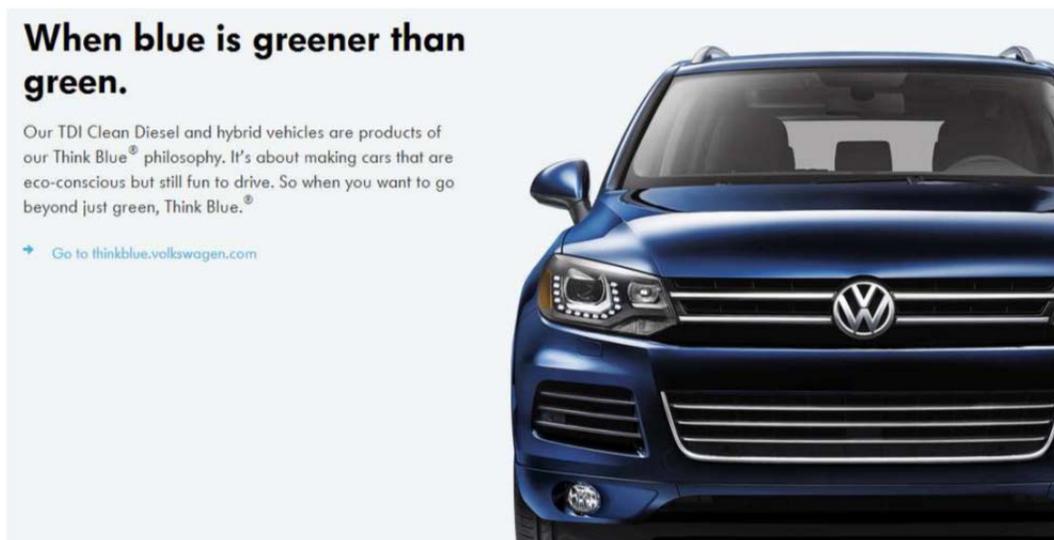
#### **VENUE**

9. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District. Plaintiffs

purchased or leased their vehicles in this District. Volkswagen marketed, advertised, sold, and leased the affected vehicles within this District.

### FACTUAL ALLEGATIONS

10. In 2008, Volkswagen introduced a so-called new breed of “clean diesel” vehicles, with its Turbo-charged Direct Injection (“TDI”) engines, beginning with the Jetta TDI sedan. These vehicles were marketed to consumers as a technological breakthrough, having diesel engines that could meet the California Air Resources Board’s (CARB) stringent emissions standards, while delivering higher fuel efficiency and performance. Volkswagen’s marketing stressed both the eco-friendliness and the performance of this “new breed” of diesel.



They were sold at a premium above the cost of standard gasoline vehicles, ranging from \$2,000 to \$6,000 each.

11. Volkswagen represented to consumers that its new diesel engines would reduce greenhouse gas emissions, including nitrogen oxides (NOx), and that they were EPA certified in all 50 states.

## Audi TDI® clean diesel

GETTING MORE FROM LESS. AUDI PIONEERED TDI® CLEAN DIESEL ENGINES TO DELIVER MORE TORQUE, LOWER FUEL CONSUMPTION AND REDUCE CO<sub>2</sub> EMISSIONS, COMPARED TO EQUIVALENT GASOLINE ENGINES. THE RESULT OF THIS REVOLUTIONARY ENGINEERING DELIVERS REMARKABLE PERFORMANCE, WHILE ACHIEVING INCREASED FUEL ECONOMY.

The EPA has now found that Volkswagen's "clean" diesel engines emit far more NO<sub>x</sub> than standard engines, up to 40 times more. Volkswagen purposefully designed these TDI vehicles to conceal the levels of toxic output to circumvent federal and state emissions laws. As Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA stated: "Using a defeat device in cars to evade clean air standards is illegal and a threat to public health." Sept. 18, 2015 EPA News Release. Yet that is exactly what Volkswagen did in its 2009-2015 Volkswagen and Audi diesel vehicles.

12. On September 18, 2015 the EPA issued a Notice of Violation ("NOV") to Volkswagen for failure to comply with Clean Air Act regulations in 482,000 diesel vehicles sold in the United States since 2008.

13. As explained in the NOV, Volkswagen manufactured and installed so-called "defeat devices" in Volkswagen and Audi diesel vehicles it sold in the United States, that were equipped with 2.0 liter engines. NOV, at 1. Defeat devices detect when the vehicle is undergoing emissions testing and turn on emissions controls, enabling the vehicle to produce lower emissions during testing. But during normal operations, these emissions controls are suppressed. This artifice results in cars that meet emissions standards in the laboratory or state testing station, but during normal operation emit NO<sub>x</sub> at up to 40 times the standard allowed under United

States laws and regulations. Such “defeat devices” are prohibited by the Clean Air Act and its regulations. 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854012(a)(3)(ii).

14. Volkswagen and/or its agents designed, manufactured, and installed the CleanDiesel engine systems in the affected vehicles, which included the “defeat device.” Volkswagen also developed and disseminated the owner’s manuals and warranty booklets, advertisements, and other promotional materials relating to the affected vehicles.

15. Nitrogen oxide pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. As the EPA explains in its NOV, “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.” NOV, at 2. Exposure to these pollutants has been linked to serious health dangers, including asthma and other respiratory illnesses serious enough to send people to the hospital. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with preexisting respiratory illness are at acute risk of health effects from these pollutants.

16. The Clean Air Act was passed to address the health dangers caused by such emissions. When it enacted the CAA, Congress found that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” 42 U.S.C. § 7401(a)(2). The CAA’s emissions restrictions were put in place to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1)-(2). The Act and its regulations do so by restricting emissions of nitrogen oxides and other pollutants from motor vehicles through its emission

standards. Every vehicle sold in the United States must satisfy emission standards for certain pollutants, including NOx. 40 C.F.R. § 86.1811-04.

17. In addition, for every vehicle introduced into United States commerce, the manufacturer must obtain a Certificate of Conformity (“COC”) from the EPA certifying compliance with applicable emission standards. Vehicles equipped with defeat devices, like those installed by Volkswagen, 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. Volkswagen applied for and obtained a COC, but it failed to describe its “defeat device” in the COC application.

18. By manufacturing and selling cars with defeat devices that allowed for higher levels of emissions than were certified to EPA, Volkswagen violated the Clean Air Act, defrauded its customers, breached its contracts, violated warranties, and engaged in unfair and deceptive practices under state and federal law.

19. According to the EPA NOV, Volkswagen installed its “defeat device” in at least the following diesel models of its vehicles (the “Affected Vehicles”): MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3. Discovery may reveal that additional vehicle models and model years are properly included as Affected Vehicles.

20. Volkswagen charged a substantial premium for the Affected “CleanDiesel” Vehicles. For the 2015 Jetta, the base S model 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 model is substantially higher. The highest level

gas Jetta SE has a starting MSRP of \$20,095, while the CleanDiesel TDI SEL MSRP is \$26,410, a staggering \$6,315 premium.

21. 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 base, mid-level and top-line trim for each affected model:

CleanDiesel Price Premiums

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

22. Volkswagen initially denied but on September 20, 2015 admitted that it “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.” NOV, at 4. It has been ordered by the EPA to recall the Affected Vehicles and repair them so they comply with EPA emissions requirements during normal operation. However, Volkswagen cannot make the Affected Vehicles comply with emissions standards without substantially degrading their performance characteristics, including horsepower and efficiency. Even if Volkswagen can make Class members’ Affected Vehicles EPA compliant, Class members will suffer actual harm and damages because their vehicles will no longer perform as they did when purchased or leased and as advertised. This will result in a diminution in value of every Affected Vehicle and it will cause owners of Affected Vehicles to pay more for fuel while using their affected vehicles.

23. Because of Volkswagen's deception, owners and lessees of the Affected Vehicles have suffered an injury. Had Plaintiffs and Class members known of the "defeat device" when 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. And when and if Volkswagen recalls the Affected Vehicles and degrades the CleanDiesel engine performance to make the Affected Vehicles compliant with EPA standards, Plaintiffs and Class members will be required to spend additional sums on fuel and will not obtain the performance characteristics of their vehicles when purchased or leased. Affected vehicles will be worth less in the marketplace because of their decrease in performance and efficiency.

#### **FACTS PERTAINING TO PLAINTIFFS**

24. In 2011, Mr. Hoffman purchased an Audi A3 TDI from Audi Silver Spring, an authorized Audi dealer in Silver Spring, Maryland.

25. Mr. Hoffman purchased this vehicle for personal, family and household use, and still owns it.

26. The automobile is registered exclusively in Mr. Hoffman's name.

27. In 2013, Mrs. Kram leased a 2014 model year Volkswagen Passat TDI SE from Heritage Volkswagen Parkville, an authorized Volkswagen dealer in Baltimore, Maryland.

28. Mrs. Kram leased this vehicle for personal, family and household use, and still owns it.

29. In purchasing and leasing their Volkswagen automobiles, Mr. Hoffman and Mrs. Kram were attempting to make an environmentally conscious decision and relied upon Volkswagen's representations about environmental benefits of the TDI engine.

30. Unbeknownst to Mr. Hoffman and Mrs. Kram, when they bought and leased their cars, the vehicles were equipped with an emissions control “defeat device” which caused the vehicle to get an EPA certification for which it did not qualify by passing certain emissions tests, but at all other times emitted up to 40 times the allowed level of pollutants, including NOx.

### **TOLLING OF THE STATUTE OF LIMITATIONS**

#### **A. DISCOVERY RULE TOLLING**

31. Class members had no way of knowing about Volkswagen’s deception regarding its CleanDiesel engine system and “defeat device.” It took federal EPA and California Air Resources Board investigations to uncover Volkswagen’s deception, which involved sophisticated software manipulation on Volkswagen’s part. As reported by the *Los Angeles Times* on September 18, 2015, it took California Air Resources Board testing on a special dynamometer in a laboratory, open road testing using portable equipment and a special testing devised by the Board to uncover Volkswagen’s scheme and to detect how software on the engine’s electronic control module was deceiving emissions certifications tests. Plainly, Volkswagen was intent on expressly hiding its behavior from regulators and consumers. This is the quintessential case for tolling.

32. Within the time of any statutes of limitation, Plaintiffs and members of the proposed classes could not have discovered through exercising reasonable diligence that Volkswagen was concealing the conduct complained of and misrepresenting its true position regarding the emission qualities of its vehicles.

33. Plaintiffs and the other Class members did not discover, and did not know of the facts that would have caused a reasonable person to suspect that Volkswagen did not report information within its knowledge to federal and state authorities, its dealerships, or consumers. Nor would a reasonable and diligent investigation by them have disclosed the existence of VW’s

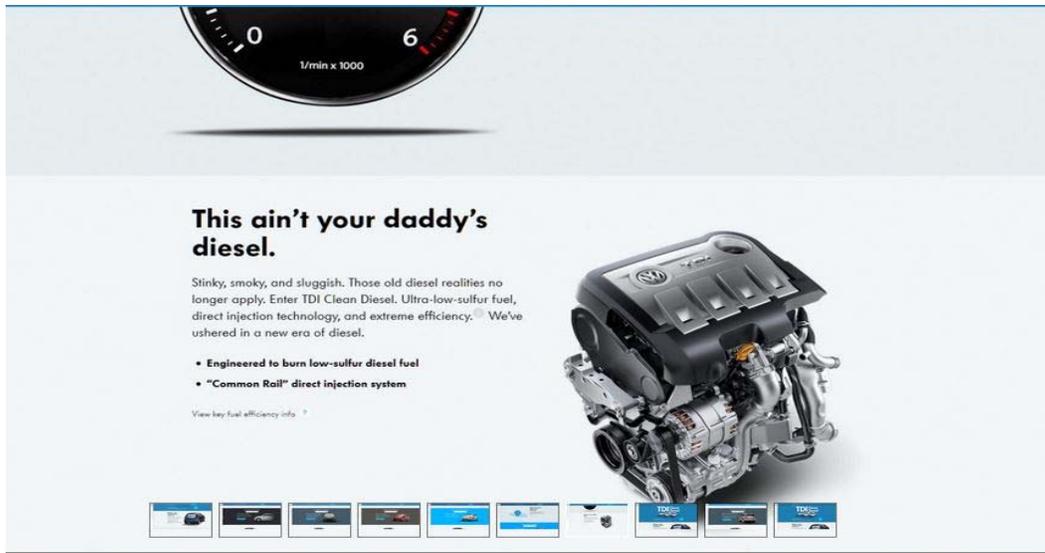
sophisticated emissions scheme and its concealment of the scheme. This information was discovered by Plaintiffs only shortly before this action was filed. Nor would such an investigation by Plaintiffs and other Class members have disclosed that Volkswagen valued profits over compliance with federal and state law, or the trust that Plaintiffs and other Class members had placed in its representations. Or that, necessarily, Volkswagen actively discouraged its personnel from raising or disclosing issues regarding the true quality and quantity of the emissions, and the emissions software, of its vehicles, or of Volkswagen's emissions scheme.

34. All applicable statutes of limitation have been tolled by operation of the discovery rule regarding claims on all vehicles identified.

**B. FRAUDULENT CONCEALMENT TOLLING**

35. All statutes of limitation have also been tolled by Volkswagen's knowing and active fraudulent concealment and denial of the facts alleged throughout the time relevant to this action.

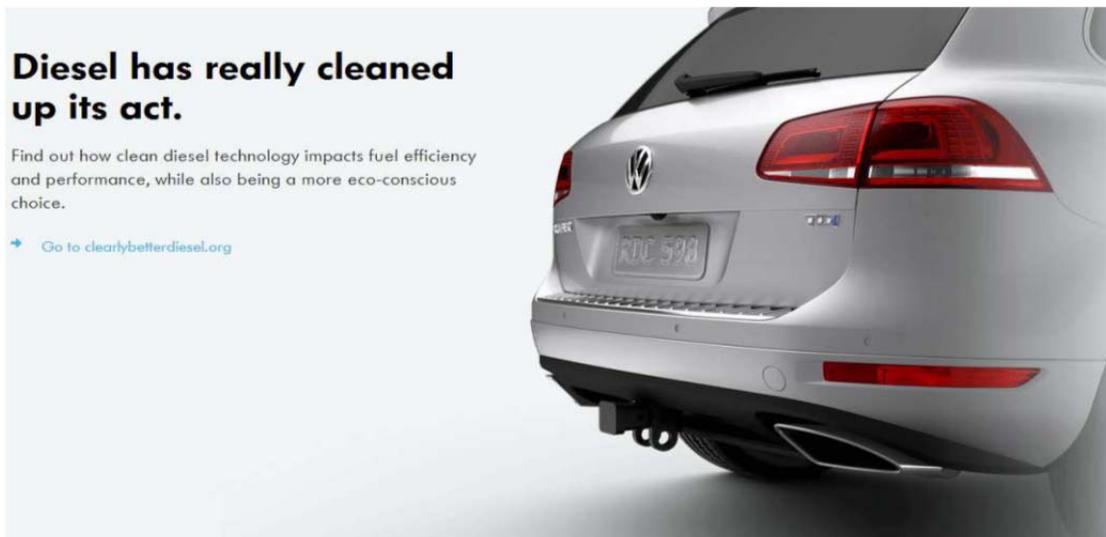
36. Instead of disclosing its emissions scheme, or that the quality and quantity of emissions from the vehicles were far worse than represented, and of its disregard of federal and state law, Volkswagen falsely represented that its vehicles complied with federal and state emissions standards, and that it was a reputable manufacturer whose representations could be trusted.



**C. ESTOPPEL**

37. Volkswagen was under a continuous duty to disclose to Plaintiffs and other Class members the true character, quality, and nature of emissions from the vehicles, and of those vehicles' emissions systems, and of the compliance of those systems with applicable federal and state law.

38. Volkswagen knowingly, affirmatively, and actively concealed the true nature, quality, and character of the emissions systems, and the emissions, of the vehicles.



39. Volkswagen was also under a continuous duty to disclose to Plaintiffs and Class members it had engaged in the scheme complained of to evade federal and state emissions and clean air standards, and that it systematically devalued compliance with, and deliberately flouted, federal and state law regulating vehicle emissions and clean air.

40. Volkswagen is estopped from relying on any statutes of limitations in defense.

#### CLASS ALLEGATIONS

41. Plaintiffs sue on behalf of themselves and as a class action, under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class:

All residents of Maryland who are current or former owners or lessees of an “Affected Vehicle.” Affected Vehicles include, without limitation: MY 2009-2015 VW Jetta; MY 2009-2015 VW Beetle; MY 2009-2015 VW Golf; MY 2014-2015 VW Passat; and MY 2009-2015 Audi A3 (“Maryland Consumer Class” or “Class”).

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

43. 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 used to prove those elements in individual actions alleging the same claim.

44. This action has been brought and may be properly maintained on behalf of each of the Classes proposed under Federal Rule of Civil Procedure 23.

45. *Numerosity.* Rule 23(a)(1): The members of the Class are so numerous that individual joinder of all Class members is impracticable. While Plaintiffs are informed and

believes there are not less than one thousand Class members, the precise number is unknown to Plaintiffs, but may be ascertained from Volkswagen's books and records. Class members may be notified of the pendency by recognized, Court-approved notice dissemination methods.

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

- a) Whether Volkswagen engaged in the conduct alleged;
- b) Whether Volkswagen designed, advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the stream of commerce in Maryland;
- c) Whether the CleanDiesel engine system in the Affected Vehicles contains a defect because it does not comply with EPA requirements;
- d) Whether the CleanDiesel engine system 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, for how long;
- f) Whether Volkswagen designed, manufactured, marketed, and distributed Affected Vehicles with a "defeat device";
- g) Whether Volkswagen's conduct violates Maryland consumer protection statutes, warranty laws, and other laws as asserted;
- 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.

47. *Typicality*: Rule 23(a)(3): Plaintiffs' claims are typical of the other Class members' claims because all Class members were comparably injured through Volkswagen's wrongful conduct as described above.

48. *Adequacy*: Rule 23(a)(4): Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Classes he seeks to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Class's interests will be fairly and adequately protected by Plaintiffs and their counsel.

49. *Declaratory and Injunctive Relief*: Rule 23(b)(2): Volkswagen has acted or refused to act on grounds applicable to Plaintiffs and the other members of the Class, making final injunctive relief and declaratory relief, regarding the Class .

50. *Superiority*: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, 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 required to individually litigate their claims, so it would be impracticable for the members of the Class to individually seek redress for Volkswagen's wrongful conduct. 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. 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.

## CAUSES OF ACTION

### COUNT I (Fraud)

51. Plaintiffs incorporate the allegations in all paragraphs above as if fully set forth.

52. Volkswagen intentionally misrepresented and concealed material facts concerning the quality of the Affected Vehicles despite a duty to disclose. Volkswagen intentionally evaded federal and Maryland vehicle emission standards by installing a software device which misrepresented its vehicles' nitrogen oxide pollutant emissions. Volkswagen vehicles passed emission certifications by deliberately inducing false results. Volkswagen's deliberate scheme resulted in noxious emissions as high as 40 times EPA and Maryland standards.

53. Volkswagen then advertised and sold these vehicles to customers, like Plaintiffs and the Class, who paid a premium, ironically, to purchase or lease "cleaner" vehicles.

54. Volkswagen intentionally concealed that the CleanDiesel engine systems were not EPA-compliant, by using its "defeat device," or acted with reckless disregard of the truth. Volkswagen denied Plaintiffs and the Class information that would have affected their decision to purchase or lease the vehicle.

55. Volkswagen made further misrepresentations to Plaintiffs and the Class through advertisements and other communications—including the standard material provided in each Affected Vehicle, promising the vehicle had no significant defects and that the vehicle complied with EPA regulations and would perform and operate properly when driven in normal usage.

56. Volkswagen knew these representations were false when they were made.

57. The Affected Vehicles purchased or leased by Plaintiff and the Class were defective, non-EPA compliant, unsafe, and unreliable due to the CleanDiesel engine system.

58. Volkswagen had a duty to disclose that the Affected Vehicles sold to customers were defective, unsafe, non-EPA compliant, and unreliable. Volkswagen had a duty to disclose for reasons including but not limited to: (1) Volkswagen entered into business transactions with Plaintiffs and the Class knowing that statements it made about the emissions output of the

Affected vehicles were misleading; and (2) Volkswagen knew during the contract that Plaintiffs and the Class were about to enter into a transaction under a mistaken belief caused by Volkswagen—and should reasonably expect Volkswagen to disclose facts pertaining to its mistaken belief.

59. Volkswagen’s concealment and misrepresentations were material because, had Volkswagen disclosed this information, Plaintiffs and the Class would not have bought or leased the Affected Vehicles—or would not have bought or leased the vehicles at the prices they paid.

60. These representations were also material because they were facts typically relied upon by a person purchasing or leasing a new motor vehicle. Volkswagen knew or recklessly disregarded that its representations were false because it used the “defeat device” to pass EPA emission requirements for the Affected Vehicles. Volkswagen intentionally made the false statements to sell the Affected Vehicles.

61. Plaintiffs and the Class relied on Volkswagen’s material representations that the Affected Vehicles were safe, environmentally clean, and met emission standards. They also relied on Volkswagen’s silence on any defects in the CleanDiesel Engine system

62. This fraudulent conduct induced Plaintiffs and the Class to purchase or lease Volkswagen’s Affected Vehicles.

63. Because of their reliance, Plaintiffs and the Class have been injured in an amount to be proven including, but not limited to their: (1) lost benefit of the bargain; (2) overpayment at the time of purchase or lease; and (3) diminished value of their Affected Vehicles.

**COUNT II**  
**VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT**  
**(Violations of MD. CODE COMM. LAW § 13-101, *et seq.*)**

64. Plaintiffs incorporate the allegations in all paragraphs above as if fully set forth.

65. Plaintiffs, Defendants, and the Maryland Consumer Class are “persons” as defined by Md. Code Comm. Law § 13-101(h).

66. The Maryland Consumer Protection Act, Md. Code Comm. Law § 13-101, *et seq.*, defines “unfair or deceptive trade practices” as, *inter alia*, a “representation that consumer goods . . . are of a particular standard, quality, grade, style, or model which they are not” or the “failure to state a material fact if the failure deceives or tends to deceive. Md. Code Comm. Law § 13-301(2)(iv), (3).

67. Plaintiffs, in their individual capacity, are a “consumer” as defined by Md. Code Comm. Law § 13-101(c).

68. The members of the Maryland Consumer Class are “consumers” as defined by Md. Code Comm. Law § 13-101(c).

69. Plaintiffs’ automobiles are a “consumer good” as defined by Md. Code Comm. Law § 13-101(d)(2).

70. Volkswagen’s concealment and misrepresentations were material because, had Volkswagen disclosed this information, Plaintiffs and the Maryland Consumer Class would not have bought or leased the Affected Vehicles—or would not have bought or leased the vehicles at the prices they paid.

71. Through its material concealment and misrepresentations, Volkswagen participated in misrepresenting the standard, quality, and grade of its automobiles

72. Volkswagen’s material misrepresentations had a tendency to mislead the Plaintiffs and the Maryland Consumer Class.

**COUNT III**  
**(Breach of Contract and Implied Covenant of Good Faith and Fair Dealing)**

73. Plaintiffs incorporate the allegations in all paragraphs above as if fully set forth.

74. 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 Class defective Affected Vehicles that did not comply with EPA and state emissions standards, were unfit for driving, and did not comport with the agreed upon emissions output. Contrary to the bargained-for-exchange, Plaintiffs and the Class paid a premium for cleaner diesel engines, but received vehicles with emissions higher than any approved vehicles on the roads.

75. Volkswagen breached its implied covenant of good faith and fair dealing. Volkswagen's failure to produce an approved vehicle unlawfully emitting up to 40 times the federal standard, and over the Maryland standard—despite clear representations of a “cleaner” vehicle—falls well below Plaintiffs' and the Class's reasonable expectations under their respective contracts.

76. Volkswagen's failure to produce an EPA-compliant vehicle, despite its misrepresentations, caused the Affected Vehicles to be less valuable than vehicles not equipped with a CleanDiesel engine system.

77. 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 which includes, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

**COUNT IV  
(Breach of Express Warranty)**

78. Plaintiffs incorporate the allegations in all paragraphs above as if fully set forth.

79. Volkswagen made express representations to Plaintiffs and the Class that the Affected Vehicles burned cleaner diesel fuel, reduced greenhouse gas emissions, and complied with emissions standards. Volkswagen made these representations through advertisements, publications, and directly in person.

80. Volkswagen's representations about its vehicles were included in the basis of the bargain.

81. As a direct and proximate cause of Volkswagen's breach, Plaintiffs and the Class received goods substantially lower in value. They will suffer damages such as diminished vehicle value and increased maintenance and repair costs.

**COUNT V  
(Unjust Enrichment)**

82. Plaintiffs incorporate the allegations in all paragraphs above as if fully set forth.

83. Plaintiffs and the Class conferred a benefit on Volkswagen when they paid a premium of thousands of dollars and selected Volkswagen vehicles over those of competitors, all while not receiving a cleaner vehicle in return. They received a vehicle that violated federal and state emission standards.

84. Volkswagen understood and accepted the benefit without providing for its value.

85. It would be inequitable for this Court to allow Volkswagen to retain the benefit of premiums paid and monies associated with increased Volkswagen sales.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all class members, requests that the Court enter judgment in their favor and against Volkswagen:

A. Certification of the proposed Class, including appointment of Plaintiffs' counsel as Class Counsel;

B. An order temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged;

C. Injunctive relief in a recall or free replacement program;

D. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined;

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 demand a jury trial for all claims so triable.

DATED: October 16, 2015

Respectfully submitted,

/s/ Thanos Basdekis

Thanos Basdekis (MD Bar No. 15228)

Bailey Glasser LLP

209 Capitol Street

Charleston, WV 25301

T: (304) 345-6555

F: (304) 342-1110

tbasdekis@baileyglasser.com

Michael L. Murphy (DC Bar No. 480163)

Bailey Glasser LLP

1054 31st Street, NW

Suite 230

Washington, DC 20007

T: (202) 463-2101

F: (202) 463-2103

mmurphy@baileyglasser.com

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

Michael C. Hoffman and Michelle M. Kram, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Thanos Basdekis, Bailey & Glasser LLP, 209 Capitol Street Charleston, WV 25301; (304) 345-6555

DEFENDANTS

Volkswagen Group of America, Inc., a New Jersey Corporation and Audi of America, Inc.,

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.

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

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, 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): 28 U.S.C. § 1332 (d) Brief description of cause: Events or omissions giving rise to claims occurred in this District

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 DOCKET NUMBER

DATE 10/16/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Thanos Basdekis

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**Case 1:15-cv-03157-ELH Document 1-1 Filed 10/16/15 Page 2 of 2**  
**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.

UNITED STATES DISTRICT COURT

for the

District of Maryland

MICHAEL C. HOFFMAN AND MICHELLE M. KRAM,
individually and on behalf of
all others similarly situated,

Plaintiff(s)

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,
a New Jersey Corporation, et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Volkswagen Group of America, Inc.
c/o CSC Lawyers Incorporating
Service Company
7 St. Paul Street
Suite 820
Baltimore, MD 21202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Thanos Basdekis
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 10/16/2015

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Maryland

MICHAEL C. HOFFMAN AND MICHELLE M. KRAM,
individually and on behalf of
all others similarly situated,

Plaintiff(s)

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,
a New Jersey Corporation, et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Audi of America, Inc.
Corporation Trust Incorporated
32 South Street
Baltimore, MD 21202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Thanos Basdekis
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 10/16/2015

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: