

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

<b>MARC G. MALON II and ADAM KESSLER,</b> ) <b>on behalf of themselves and all others</b> ) <b>similarly situated,</b> ) ) ) <b>Plaintiffs,</b> ) ) ) <b>v.</b> ) ) ) <b>VOLKSWAGEN GROUP OF AMERICA, INC.</b> ) ) ) <b>Defendants.</b> )	<b>Civil Action No.:</b> _____  <b>CLASS ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES</b>  <b>JURY TRIAL DEMANDED</b>
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**COMPLAINT - CLASS ACTION**

**I. Preliminary Statement**

1. This is a consumer class action brought on behalf of buyers of Defendant’s 2009-2015 Volkswagen and Audi diesel powered vehicles equipped with “Defeat Device” software on its “CleanDiesel” system to fake compliance with emissions standards in violation of the common law, the federal Magnusson-Moss Warranty Act and Maine statutes. Volkswagen Group of America, Inc. (hereafter “Defendant” or “VW”) violated these laws by engaging in the deceptive practice of unlawfully placing the Defeat Device in Plaintiffs’ vehicles and the vehicles of some 482,000 consumers in the United States, including many hundreds of similarly situated Maine consumers, enabling the diesel vehicles with Defeat Devices (hereafter “Dirty Air Vehicles”) to produce up to 40 times the maximum allowable pollution in real-world use thereby cheating on legally required air emissions tests.

**II. Jurisdiction and Venue**

2. Jurisdiction of this Court arises under: 1) the Class Action Fairness Act, 28 U.S.C. §1332(d), as the putative Class consists of more than 100 members; the amount in controversy exceeds \$5,000,000 exclusive of costs and interest and diversity exists; and 2) 28 U.S.C. § 1331,

for a federal question. Additionally, supplemental jurisdiction exists for the state law claims under 28 U.S.C. § 1367.

3. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b).

### **III. Parties**

4. Plaintiff Marc G. Malon II (“Mr. Malon”) is an adult individual who resides in Biddeford, Maine.

5. In December 2011, Plaintiff Malon purchased a new 2012 Jetta TDI sedan, one of the Dirty Air Vehicles, at Prime Volkswagen of Saco, Maine. He still owns it.

6. The environmental performance including VW’s claims of cleaner air emissions and better fuel efficiency, along with overall vehicle performance, was important to Mr. Malon in his decision to buy the VW car. Plaintiff Malon bought his car believing VW’s claims that the Clean Diesel system is markedly cleaner than traditional diesel vehicles. Had Defendant disclosed that the vehicle actually emitted far more air pollution than allowed by law and Environmental Protection Agency (“EPA”) standards, Plaintiff would not have purchased a Dirty Air Vehicle. At no time before September 24, 2015, did Plaintiff Malon know of the Defeat Device or that the CleanDiesel marketing was false and misleading. VW’s installation of the Defeat Device has caused Plaintiff Malon damages including but not limited to out-of-pocket-loss, the costs of future repairs and diminished performance along with diminished value of his vehicle.

7. Plaintiff Adam Kessler (“Mr. Kessler”) is an adult individual who resides in Portland, Maine.

8. In the Spring of 2012, Plaintiff Kessler purchased a new 2012 Jetta Sportswagon TDI, one of the Dirty Air Vehicles, at Morong Volkswagen & Audi of Falmouth, Maine. He still owns it.

9. The environmental performance including VW's claims of cleaner air emissions and better fuel efficiency, along with overall vehicle performance, was important to Mr. Kessler in his decision to buy the VW car. Plaintiff Kessler bought his car believing VW's claims that the CleanDiesel system is markedly cleaner than traditional diesel vehicles. Had Defendant disclosed that the vehicle actually emitted far more air pollution than allowed by law and EPA standards, Plaintiff would not have purchased a Dirty Air Vehicle. At no time before September 24, 2015, did Plaintiff Kessler know of the Defeat Device or that the CleanDiesel marketing was false and misleading. VW's installation of the Defeat Device has caused Plaintiff Kessler damages including but not limited to out-of-pocket-loss, the costs of future repairs and diminished performance along with diminished value of his vehicle.

10. Defendant VW is a business entity regularly engaged in the business of manufacturing, distributing and selling VW and Audi branded vehicles in this State and all fifty states organized under the laws of New Jersey with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, VA 20171. At all times relevant to this action, VW manufactured, marketed, sold, distributed, and warranted the Dirty Air Vehicles under the Volkswagen and Audi brand names throughout the United States including in the State of Maine. Volkswagen and/or its agents designed, manufactured, and installed the CleanDiesel engine systems in the Dirty Air Vehicles, which included the Defeat Device. Volkswagen also developed and disseminated the owner's manuals and warranty booklets, advertisements, and other promotional materials for the Dirty Air Vehicles.

#### **IV. Factual Allegations**

11. Starting with some Model Year 2009 vehicles, Defendant VW commenced intentionally deceiving regulators and consumers about the substandard air emissions performance

of over 482,000 diesel Volkswagen and Audi Dirty Air Vehicles sold in the United States.

12. By secretly and intentionally installing the so-called Defeat Devices on the Dirty Air Vehicles, Defendant violated the Clean Air Act, defrauded its customers, and engaged in unfair competition and trade practices under state and federal law.

13. The Defeat Devices employ computer software enabling the Dirty Air Vehicles to turn on full emissions control during air emissions testing but suppressing the emissions controls during normal vehicle operation.

14. As the EPA described the device in a statement issued on September 18, 2015:

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

15. VW not only intentionally misrepresented the ability of the Dirty Air Vehicles to deliver high performance and fuel economy with the low, legally mandated air emissions, but VW made it appear to regulators that the Dirty Air Vehicles delivered on the promises and warranties and complied with law.

16. Over the years that VW concealed the actual facts of its diesel vehicle engineering, the Dirty Air Vehicles were marketed as environmentally-friendly "clean diesels" that also yielded high fuel efficiency and dynamic performance.

17. VW built its brand and consumer loyalty substantially based on promoting its diesel vehicles as "clean" and "green". Pro-environment attributes along with high efficiency and performances were the central components of Defendant's diesel engine marketing campaign.

18. VW assigned the label "CleanDiesel" to the engine technology of the Dirty Air Vehicles.

19. VW widely disseminated a “greenwashing” message for its diesel vehicles in marketing messaging like this: “The Volkswagen TDI engine is cleaner than conventional diesels, emitting 95% less soot as well as a reduction in oxides of nitrogen and sulfur. It's powerful, with the kind of low-end torque that racers and tuners demand. It's efficient, using a turbocharger and smart exhaust design to burn fuel more effectively.... And best of all, it will help save you money with out-of-this-world fuel economy.”

20. On its website, Defendant 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.”

21. VW directed, supported and provided data to the website [www.clearlybetterdiesel.org](http://www.clearlybetterdiesel.org) to promote “green” diesel technology. The website stated that VW’s technology reduces smog and “meets the highest standards in all 50 states, thanks to . . . innovative engine technology that burns cleaner.”

22. These and other similar representations, taken as true by customers, were intentionally and knowingly false when made.

23. Plaintiffs and Class Members reasonably believed in the honesty and integrity of VW, which for decades has held itself out as possessing expertise and technological leadership in the automotive industry.

24. Plaintiffs and Class Members reasonably relied on VW’s representations concerning “CleanDiesel” technology and grossly overpaid for Dirty Air Vehicles in reliance on VW’s the environmental compliance and other false and misleading assurances.

25. It is reported that as early as 2007, Bosch, the world’s leading supplier of

automotive parts and systems to vehicle manufacturers, told VW of its discovery of illegal modifications to its control software.

26. Some of VW's own technicians say that they brought concerns about the Defeat Devices to VW's Board of Directors in 2011.

27. As the public record makes plain, VW knew for years that it was putting defective Dirty Air Vehicles into the stream of commerce with severe and pervasive design defects. Yet, despite this knowledge, VW never disclosed the material facts to consumers.

28. 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.

29. Under federal law, cars equipped with Defeat Devices, such as ones purchased by Plaintiffs and Class Members, cannot be certified.

30. In May 2014, West Virginia University's Center for Alternative Fuel, Engines & Emissions ("CAFEE") published results from a study commissioned by the International Council for Clean Transportation ("ICCT"). Testing air emissions from certain diesel vehicles under normal driving conditions, CAFEE found that the levels of nitrogen oxide emissions from two of VW's diesel cars — the 2012 Volkswagen Jetta TDI and the 2013 Volkswagen Passat TDI — significantly exceeded EPA standards.

31. On May 6, 2015, the California Air Resources Board ("CARB"), working with the EPA, initiated tests in both laboratory settings and during normal vehicle operation. CARB's testing of the VW 2.0 liter diesel engine "resulted in the vehicle failing the NO<sub>x</sub> [nitrogen oxide] standard," showed that nitrogen-oxide emissions were "significantly higher than expected," and

“resulted in uncontrolled NOx emissions.”

32. On September 3, 2015, VW finally admitted that its diesel cars were "designed and manufactured with a defeat device to bypass, defeat or render inoperative elements of the vehicle's emission control system."

33. As a result of this fraud, the Dirty Air Vehicles meet emissions standards in the testing stations, but according to the EPA, otherwise emit nitrogen oxides (NOx) at 10 to 40 times the legal limits under U.S. laws.

34. NOx pollution contributes to nitrogen dioxide, ground-level and fine particulate matter found in soot, all of which presents serious health hazards.

35. Volkswagen installed its Defeat Device in at least the following diesel models: Model Year (“MY”) 2009-2015 VW Jetta (including the Jetta Sportswagen); MY 2009-2015 VW Beetle (including the Beetle Convertible); MY 2009-2015 VW Golf (including the Golf Sportswagen); MY 2014-2015 VW Passat; MY 2009-2015 Audi A3; and MY 2009-2015 Audi AS.

36. Through discovery, Plaintiffs may learn that additional vehicle models and model years are also among the Dirty Air Vehicles.

37. On October 7, 2015, VW’s Chief Executive Officer Matthias Muller revealed plans to recall, starting January 2016, millions of defective diesel cars around the world, saying that VW hopes to have all of the vehicles repaired by the end of 2016. The announced recall plan does not include the Dirty Air Vehicles in Maine or the rest of the United States.

38. If Plaintiffs and Class members knew of the Defeat Devices when they were in the market for a new vehicle, they would not have purchased or those vehicles.

39. VW will not be able to make the Dirty Vehicles comply with emissions standards

without substantially reducing the vehicles performance with respect to horsepower, torque and fuel efficiency. No recall of the Dirty Air Vehicles can “fix” the problem and deliver the nonexistent vehicle that VW promoted and promised it was selling to its consumers.

40. Since a “fix” that reduces air emissions to comply with the law and meet EPA standards would reduce vehicle fuel efficiency and performance, Plaintiffs and Class members will continue to suffer harm and damages because their vehicles will never measure up to what VW promised and if “fixed” will perform worse than before the “fix.”

41. All Dirty Air Vehicles are already diminished in value and a “fix” will require that owners pay more for fuel when operating their cars.

42. As result, Plaintiffs bring this action individually and on behalf of all other current and former owners of Dirty Air Vehicles in Maine for violation of federal law and Maine state law. Plaintiffs seek damages, injunctive relief, and equitable relief for VW’s conduct related to the Defeat Device and its unlawful conduct as alleged here.

43. Under Maine law, it is “unlawful for any [m]anufacturer, factory branch, factory representative, distributor or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith or unconscionable and which causes damage to any of said parties or to the public.” 10 M.R.S.A. § 1174.

44. The acts alleged against VW that are the subject of the class action were authorized, ordered, or done by their officers, directors, agents, employees, and/or representatives, including but not limited to persons involved in product and technology development, advertising, marketing, distribution and sales while actively engaged in the operation of VW’s business.

#### **V. Tolling of Statutes of Limitations**

45. All applicable statutes of limitation have been tolled by Defendant's knowing and

active concealment of the facts alleged herein. Plaintiffs and Class Members relied on the misrepresentations and omissions to their detriment and did not discover, nor could a reasonable person have discovered, that VW had a scheme to defeat air emission testing and thereby defraud consumers. As buyers of VW's cars, Plaintiffs and Class Members had a special relationship with VW that imposed on VW a duty to disclose the cause of action, and VW failed to honor that duty.

46. Defendant was and remains under a continuous duty to disclose to Plaintiffs and Class members all material facts relevant to the Dirty Air Vehicles including but not limited to the actual quality of the CleanDiesel technology and that it had engaged in the scheme complained of herein to evade federal and state emissions laws and standards, and that it deliberately evaded federal and state law regulating vehicle air emissions.

#### **VI. Class Action Allegations**

47. Plaintiffs bring this action individually and as a class action, pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the following Class:

All persons in the State of Maine who are current or former owners of a "Dirty Air Vehicle" including, without limitation: 2009-2015 VW Jetta; 2009-2015 VW Beetle; 2009-2015 VW Golf; 2014-2015 VW Passat; 2009-2015 Audi A3; and 2009-2015 Audi AS.

48. The Class does not include VW and its officers, directors, agents, employees, counsel and its subsidiaries and affiliates; Class Counsel, employees of Class Counsel's firm and Class Counsel's immediate family members; the presiding Judge and Magistrate Judge and their immediate family members; and all persons who make a timely election to be excluded from the Class. Also excluded from the Class are individuals who have personal injury claims resulting from the installation of Defeat Device's in the VW CleanDiesel system.

49. The members of the Class are so numerous that joinder of all members is

impracticable. Although the precise number of Class members is known only to Defendant, Plaintiffs aver upon information and belief that Defendant sold nearly 500,000 Dirty Air Vehicles in the United States during the class period. Plaintiffs estimate that the Class numbers more than one thousand persons.

50. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. The common questions include whether:

- a. VW engaged in the conduct alleged herein;
- b. VW designed, manufactured, marketed, and distributed Dirty Air Vehicles with a Defeat Device;
- c. VW violated Maine statutory and common law and the federal Magnusson-Moss Act by designing, advertising, marketing, distributing, and selling the Dirty Air Vehicles in Maine;
- d. VW's CleanDiesel engine system in the Dirty Air Vehicles is defective and does not comply with U.S. law and EPA rules and standards;
- e. VW used improper and deceptive means to evade and circumvent air emissions testing protocols;
- f. VW knew about the nature of the Defeat Device and the violation of law and, if so, for how long;
- g. VW intentionally made false and misleading statements to regulators and to consumers in communications, advertisements and other marketing materials;
- h. VW's conduct violates consumer protection statutes, trade practices statutes, warranty laws, and law as asserted herein;
- i. Plaintiffs and Class Members overpaid for their Dirty Air Vehicles and, if so, by how much;
- j. the CleanDiesel engine systems in Dirty Air Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Dirty Air Vehicles;
- k. Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- l. Plaintiffs and Class Members are entitled to damages and other monetary

relief, including but not limited to, punitive damages, and, if so, in what amount.

51. Plaintiffs' claims are typical of the claims of the Class, which all arise from the same operative facts and are based on the same legal theories.

52. Mr. Malon and Mr. Kessler (collectively "Representative Plaintiffs") will fairly and adequately protect the interests of the Class. Representative Plaintiffs are committed to vigorously litigating this matter and have retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Representative Plaintiffs nor their counsel have any interests which might keep them from vigorously pursuing the claims or protecting the interests of all Class Members.

53. This action should be maintained as a class action because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members which would establish incompatible standards of conduct for the parties opposing the Class, as well as a risk of adjudications with respect to individual members which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

54. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of the 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.

55. A class action is a superior method for the fair and efficient adjudication of this controversy. The interest of Class members in individually controlling the prosecution of separate claims against VW is slight because of the sheer number of claims against the Defendant and complexity of the matter.

56. Management of the Class's claims is likely to present significantly fewer difficulties than those presented by massive numbers of individual claims. The identities of the Class Members may be obtained from Defendants' records.

**Count One**  
**Breach of Express Warranty**

57. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

58. VW is and, at all relevant times, was a seller of motor vehicles under 11 M.R.S.A. § 2-313.

59. By advertising and making numerous affirmation of facts and promises, VW expressly warranted to purchasers that the diesel engines in its vehicles have certain "clean" and "green" attributes and that the Dirty Air Vehicles at least complied with all applicable laws and regulations concerning its air emissions.

60. In addition, VW stated that the vehicles achieved a certain fuel efficiency in terms of miles per gallon of fuel when tested in accordance with EPA regulations. VW's statements created an express warranty that, under EPA test conditions, the vehicle achieved the stated fuel efficiency for purposes of comparisons with other vehicles.

61. Maine Department of Environmental Protection's regulations require that every motor vehicle manufacturer doing business in Maine "provide a warranty for the ultimate purchaser and each subsequent purchaser that complies with the requirements of Title 13, California Code of Regulations, Sections 2035 through 2040 and 2046." 06-096 C.M.R. ch. 127 §5.

62. VW violated Maine law on express warranty by engaging in the following conduct:

- a. Falsely representing the character of the "Dirty Air Vehicles" environmental performance including with respect to air emissions and fuel mileage;

- b. Knowing that the Dirty Air Vehicles did not possess the performance and emissions control attributes VW had represented;
- c. Knowingly installing the Defeat Device on the Dirty Air Vehicles to mislead regulators and consumers while covering defects and the failure of emissions controls and other vehicle performance;
- d. Using the Defeat Device to avoid compliance with EPA emissions standards and misleadingly boosting the Dirty Air Vehicles performance; and
- e. Otherwise using false, deceptive, misleading and unfair or unconscionable means to sell defective, overpriced Dirty Air Vehicles to Plaintiffs and Class Members.

63. The Defeat Devices cannot be repaired or redressed without materially altering the advertised estimated fuel economy and other performance characteristics of the vehicles.

64. Defendants' acts as described above were done with intentional and negligent disregard for Plaintiffs' rights under the law and with the purpose of taking more money from Plaintiffs and Class Members than the Dirty Air Vehicles are worth.

65. As a direct and proximate result of VW's breach of these express warranties, Plaintiffs and Class Members have suffered damages in an amount to be determined at trial.

**Count Two**  
**Breach of Implied Warranties**

66. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

67. VW is and, at all relevant times, was a seller of motor vehicles under 11 M.R.S.A. § 2-314.

68. A warranty that the Dirty Air Vehicles were in merchantable condition was implied in law under 11 M.R.S.A. § 2-314 when Representative Plaintiffs and Class Members purchased their vehicles.

69. The Dirty Air Vehicles that Plaintiffs and Class Members purchased are defective because they are not reasonably fit for the intended use and fail to achieve compliance with federal and state emissions laws when operated in accordance with their reasonably foreseeable use.

70. Unbeknownst to Plaintiffs and Class Members, VW installed the Defeat Device in the Dirty Air Vehicles that rendered defective the emissions control systems and the diesel engines.

71. When Plaintiffs and Class members purchased the Dirty Air Vehicles, the vehicles did not conform to the promises or affirmations made by VW, including that the vehicles were designed to meet air emissions standards but, as alleged above, were designed to cheat on the standards and thereby emit far higher levels of pollution than required by law and promised by VW.

72. The Dirty Air Vehicles with the defeat devices do not comply with EPA testing procedures and with air emissions standards set by law during normal operation of the vehicles.

73. As a direct and proximate result of VW's breach of implied warranties, Plaintiffs and Class Members suffered damages and are entitled to obtain the relief described below.

**Count Three**  
**Violations of the Maine Uniform Deceptive Trade Practices Act**  
**(10 M.R.S.A. §§ 1211-16)**

74. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

75. Maine's Uniform Deceptive Trade Practices Act ("UDTPA"), 10 M.R.S.A. §§1211-16 prohibits deceptive acts or practices in the course of business.

76. VW violated the UDTPA by engaging in the following conduct by:

- a. Representing that the Dirty Air Vehicles have characteristics, uses, benefits or qualities that they do not have, including but not limited to compliance with the environmental laws and meeting air emission, fuel efficiency and performance standards as stated. 10 M.R.S.A. § 1212(1)(E);

- b. 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, 10 M.R.S.A. § 1212(1)(G);
- c. Advertising goods or services with intent not to sell them as advertised, 10 M.R.S.A. § 1212(1)(I);
- d. Fraudulently installing and intentionally failing to disclose the Defeat Devices; and
- e. Engaging in any other conduct which creates a likelihood of confusion or misunderstanding, 10 M.R.S.A. § 1212(1)(L).

77. Plaintiffs seek to enjoin further unlawful, unfair, and/or deceptive acts or practices by VW under 10 M.R.S.A. § 1213 and in the form of a vehicle replacement program.

78. Plaintiffs also seek an award of attorney's fees pursuant to 10 M.R.S.A. § 1213.

**Count Four**  
**Violations of the Maine Unfair Trade Practices Act**  
**(5 M.R.S.A. § 205-A -214)**

79. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

80. Any alleged debts at issue arose out of a transaction which was a consumer purchase primarily for personal, family or household purposes.

81. Defendants violated the section 207(2) of the MUTPA by engaging in the following unfair and deceptive acts or practices:

- a. Withholding material facts about the Defeat Device and the failure of VW's CleanDiesel technology to meet EPA air emissions standards;
- b. Making unsubstantiated advertising and marketing claims about the environmental performance, fuel efficiency and overall performance of the Dirty Air cars;
- c. Failing to disclose that the Dirty Air Vehicles are not reasonably fit for their intended use;
- d. Unfairly and unconscionably overcharging Plaintiffs and Class Members for substandard Dirty Air Vehicles;
- e. Depriving consumers of post-purchase remedies while withholding information on the inadequate performance of the Dirty Air Vehicles;

- f. Representing that goods or services meet a particular standard of environmental performance, achieve specified high fuel efficiency and attain other performance qualities; and
- g. Benefiting from the UTPA violation by making more money from the sale of the car than warranted by the vehicles' condition and true merchantability.

82. VW's acts as alleged constitute unfair or deceptive acts or practices in the conduct of any trade or commerce and multiple, separate violations of Maine's Unfair Trade Practices Act.

83. VW's acts as alleged are immoral, unethical, unscrupulous, oppressive and violate the law and established public policy, substantially injuring consumers including Plaintiffs and Class Members.

84. VW's acts as alleged include material misrepresentations made to mislead Plaintiffs and Class Members in a manner that Plaintiffs and Class Members could not reasonably avoid reliance on, leading to Plaintiffs and Class Members' losses of money or real or personal property.

85. Though notice in the form of a written demand for relief is typically required under 5 M.R.S.A. § 213-A, under the circumstances of this case, the acts already admitted, the knowledge of claims of Plaintiffs and Class Members and the response to those claims already publicly discussed by VW, the notice in this case would be both futile and needless.

86. As a result of the above violations of the MUTPA, Plaintiffs have suffered substantial injury entitling Plaintiffs to an award of: injunctive relief; affirmative changes to the Defendants' practices and procedures; equitable relief; restitution; money damages and attorney's fees and costs.

**Count Five**  
**Magnuson - Moss Act (15 U.S.C. §§ 2301, et seq.) - Implied Warranty**

87. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

88. VW's Dirty Air Vehicles are a "consumer product" as that term is defined in 15 U.S.C. § 2301(1).

89. VW is a "warrantor" and "supplier" as those terms are defined in 15 U.S.C. § 2301(4) and (5).

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

91. 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 a written or implied warranty.

92. VW provided Plaintiffs and Class Members with "warranties" as that term is defined in 15 U.S.C. § 2301(7).

93. VW breached the warranties as described in more detail above. Without limitation, VW's Dirty Air Vehicles are defective, as described above, giving rise to the problems and failures described above.

94. By VW's acts and omissions as described herein, including VW's knowledge of the defects inherent in the vehicles and its action and inaction despite that knowledge, VW has failed to comply with its obligations under its written and implied promises, warranties, and representations.

95. Plaintiffs and Class Members are in privity with VW in that they purchased the Dirty Air Vehicles (with the Defeat Device and related software) from VW or its agents.

96. In its capacity as a warrantor, and by conduct described herein, VW cannot limit its warranties to exclude coverage of the Defeat Device and related software and systems and any such effort to disclaim, or otherwise limit, liability for the defective the software and supporting systems is unconscionable, null and void.

97. As a result of VW's breach of implied warranties, Plaintiffs and Class Members are entitled to revoke acceptance of the Dirty Air Vehicles, be awarded damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. §2310.

**Count Six**  
**Fraudulent Concealment**

98. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

99. VW intentionally concealed that the CleanDiesel engine systems in the Dirty Air Vehicles could not pass EPA air emissions standards without the illegal "defeat device", or acted in reckless disregard of whether the fact was true or false.

100. VW further also misrepresented in advertising, marketing and other communications, including uniform materials provided with each car, that the Dirty Air Vehicles it sold complied with all laws, including EPA air emissions standards, and would deliver certain high levels of fuel efficiency and performance.

101. VW had a duty to disclose the actual facts about the defects in the Dirty Air Vehicles including but not limited to the installation of the Defeat Devices in the defective CleanDiesel engine system, the EPA air emission standards non-compliance and fuel efficiency and other performance problems.

102. VW withheld from Plaintiffs and Class Members information material to their decisions to purchasing a vehicle.

103. The Dirty Air Vehicles purchased by Plaintiffs and Class Members, contrary to VW's representation were defective due to the installation of the defeat devices in the TDI CleanDiesel engine systems and due to the vehicle's failure to meet EPA air emissions standards or to achieve promised performance.

104. VW knew its representations about the environmental performance and other aspects of the Dirty Air Vehicle's performance were false when made but made the representations for the purpose of inducing Plaintiffs and Class Members to buy the Dirty Air Vehicles.

105. Plaintiffs and Class Members justifiably relied upon VW's representations that the vehicles they were purchasing were safe, environmentally clean, efficient and free of any known defects.

106. VW's concealment was material because if the true facts, facts that would typically be relied upon, were disclosed, Plaintiffs and Class Members would not have bought the Dirty Air Vehicles, or would not have bought the vehicles at the prices they paid.

107. As a direct and proximate result of VW's fraudulent concealment and reasonable reliance by consumers, Plaintiffs and Class Members have been injured in an amount to be proven at trial, including but not limited to, their lost benefit-of-the-bargain, overpayment at the time of purchase and/or the diminished value of the Dirty Air Vehicles.

108. VW's conduct was knowing and intentional and demonstrated a lack of care so outrageous and reckless in disregard for the rights of Plaintiffs and Class Members that malice can be implied therefore entitling Plaintiffs and Class Members to an award of punitive damages to the extent permitted under Maine law.

**Count Seven**  
**Breach of Contract**

109. Plaintiffs incorporate the paragraphs above as if fully set forth herein.

110. Every sale of a Dirty Air Vehicle constitutes a written contract between VW and the buyer, including the sales made by VW to Plaintiffs and Class Members.

111. VW breached contractual obligations by tendering to Plaintiffs and Class Members the Dirty Air Vehicles equipped with Defeat Devices designed to turn on full emissions control

during air emissions testing but suppressing the emissions controls during normal vehicle operation, causing the Dirty Air Vehicles to emit pollutants at up to 40 times the EPA standards.

112. VW's installation of Defeat Devices in the Dirty Air Vehicles constituted a substantial breach as it caused the Dirty Air Vehicles to emit far greater air pollutants than VW warranted, to violate federal and state emission standards and reduce fuel efficiency and vehicle performance in the event that air emissions violations are fixed.

113. Plaintiffs and Class Members would not have purchased the Dirty Air Vehicles, or not at the price they paid, had they known of the presence of the Defeat Device.

114. As a direct and proximate result of Defendants' breach of contract or warranty, Plaintiffs and the Class have suffered damages in an amount to be proven at trial.

**VII. Demand for Jury Trial**

115. Plaintiffs demand a trial by jury on all claims and issues so triable.

**VIII. Prayer For Relief**

WHEREFORE, Plaintiffs respectfully pray that relief be granted against Defendant VW with the entry of an order:

- a. certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and their counsel to represent the Class;
- b. declaring that Defendant's acts and omissions as described above are in violation of statutory and common law as alleged;
- c. directing Defendant to discontinue the unlawful manufacture, distribution and sale of Dirty Air vehicles;
- d. awarding actual, compensatory and/or restitution damages including but not limited to past and future economic losses, a buy back constituting the benefit-of-the-bargain, cost of repairs, and/or diminished value of Plaintiffs' vehicles;
- e. awarding punitive damages;

- f. awarding under the MUTPA, 5 M.R.S.A. § 213(2), and/or Magnusson-Moss Act, 15 U.S.C. §2310, reasonable attorneys' fees, costs and prejudgment and post-judgment interest; and
- g. granting such other and further relief as may be just and proper.

Respectfully submitted,  
LEWIS SAUL & ASSOCIATES, P.C.

Date: October 15, 2015

By: /s/ Jon Hinck  
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