

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JEREMY MARTIN, RICHARD TREDO,
STEVEN DIMAURO and JEFFERY
MANOUS, individually, and on behalf of a
class of similarly situated individuals,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC., AUDI AG and VOLKSWAGEN AG,

Defendants.

Civ. Ac. No.:

**CLASS ACTION COMPLAINT
AND JURY TRIAL DEMAND**

Plaintiffs Jeremy Martin, Richard Tredo, Steven Dimauro and Jeffery Manous individually, and on behalf of all others similarly situated allege as follows:

INTRODUCTION

1. This case concerns the deliberate violation of federal and state laws and regulations by Defendants Volkswagen AG (“VWAG”) and its subsidiaries Audi AG (“Audi”) and Volkswagen Group of America, Inc. (“VWoA”), with regard to their Volkswagen Jetta, Beetle and Golf (MY 2009-2015), Volkswagen Passat (MY 2014-2015) and Audi A3 (MY 2009-2015) vehicles that contain Type EA 189 and EA 288 diesel engines (hereinafter referred to as “Class Vehicles”). Defendants designed, manufactured, distributed and sold hundreds of thousands of Class Vehicles to consumers in the United States, which they falsely touted as being “clean” and efficient, while still preserving vehicle performance. All of the Class Vehicles contained a “defeat device” that was designed to defeat vehicle emissions testing programs and perpetuate the narrative that defendants’ diesel vehicles could be both low-emission and still maintain good performance.

2. The Class Vehicles were sold or leased in the United States while unbeknownst to regulators and consumers, they were actually expelling up to forty times the amount of nitrous oxide (NOx) and other pollutants into the air than the levels represented by defendants. In a September, 18, 2015 news release the Environmental Protection Agency (“EPA”) announced a notice of violation served upon VWoA, which alleges that defendants’ Class Vehicles were “[u]sing a defeat device in cars to evade clean air standards is illegal and a threat to public health.” In reality, the Class Vehicles were far from being “clean” as they were advertised, and when they are brought into compliance as will be required by the EPA, they will suffer from reduced performance (hereinafter referred to as “Emissions Defect”)

3. As a result of the Emissions Defect, the vehicles are less desirable both to their current owners, who would not have purchased them had they known about Defendants’ deception, and will also be worth less in the secondary market.

4. On information and belief, Defendants knew that the Class Vehicles contained the Emissions Defect, were not as advertised and were purposefully deceiving U.S. regulators and consumers. Nevertheless, Defendants actively concealed and failed to disclose the Emissions Defect at the time of purchase or lease and thereafter.

5. Had Plaintiffs and the Class Members known about the Emissions Defect at the time of sale or lease, Plaintiffs and the Class Members would not have purchased the Class Vehicles or would have paid less for them.

6. As a result of Defendants’ practices, Plaintiffs and the other members of the proposed Classes, have suffered an injury, including economic damages, and have lost money or property. Plaintiffs bring a claim for breach of express warranty, breach of implied warranty, violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*,

statutory fraud, breach of good faith and fair dealing and unjust enrichment.

PARTIES

Plaintiff Jeremy Martin

7. Plaintiff Jeremy Martin is a California citizen who resides in Sacramento, California.

8. On or about June 27, 2014, Martin purchased a used 2011 Jetta TDI from Petaluma Hyundai in Petaluma, California in the belief that the car was environmentally friendly and efficient while offering great performance. Martin also liked the the vehicle did not require diesel exhaust fluid (known as “DEF”). Martin purchased the vehicle primarily for his personal, family, and/or household purposes. The vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by Defendants, and bears Vehicle Identification Number 3VWLL7AJ2BM070147.

9. Prior to his purchase of the vehicle at issue, Martin did considerable research on the vehicle including reading reviews on Edmunds.com, Consumer Reports and Motor Trend. During that research Martin learned that the 2011 2.0 TDI was one of “WardsAuto 10 Best Engines” and also that the engine had won “Green Car of the Year” twice. Martin recalls that the research he reviewed discussed the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system.

10. None of the research reviewed or representations received by Martin (or other class members) contained any disclosure relating to the “defeat device,” the Emissions Defect, or that Defendants had purposefully falsified its certification of EPA compliance. Had Defendants disclosed that Martin’s vehicle actually emitted up to forty times the permitted levels of pollutants and that if the vehicle was brought into EPA compliance that

its performance would change, he would not have purchased his vehicle with the CleanDiesel engine, or would have paid less for the vehicle.

11. Martin and Class Members have suffered an ascertainable loss as a result of Defendants' omissions and/or misrepresentations associated with the Emissions Defect, including but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, and diminished value of his vehicle. Among, other things, Martin paid a premium over the price of an equivalent gas-powered vehicle.

Plaintiff Richard Tredo

12. Plaintiff Richard Tredo is a Maryland citizen who resides in Havre De Grace, Maryland.

13. On or about June 26, 2014, Tredo leased a new 2014 Passat TDI from Cook Volkswagen of Bel Air, an authorized Volkswagen retailer in Fallston, Maryland in the belief that the car was environmentally friendly and efficient while offering great performance. Tredo leased the vehicle primarily for his personal, family, and/or household purposes. The vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by Defendants, and bears Vehicle Identification Number 1VWCN7A36EC088782.

14. Prior to his lease of the vehicle at issue, Tredo saw advertisements, spoke to Defendants' representatives and reviewed written marketing materials at Cook Volkswagen regarding the "CleanDiesel" system. Cook recalls that the marketing materials and representations touted the cleanliness of the engine system for the environment and the exceptional gas mileage of the engine system.

15. None of the marketing materials reviewed or representations received by Tredo (or other class members) contained any disclosure relating to the "defeat device," the

Emissions Defect, or that Defendants had purposefully falsified its certification of EPA compliance. Had Defendants disclosed that Tredo's vehicle actually emitted up to forty times the permitted levels of pollutants and that if the vehicle was brought into EPA compliance that its performance would change, he would not have leased his vehicle with the CleanDiesel engine, or would have paid less for the vehicle.

16. Tredo and Class Members have suffered an ascertainable loss as a result of Defendants' omissions and/or misrepresentations associated with the Emissions Defect, including but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, and diminished value of his vehicle. Among, other things, Tredo paid a premium over the price of an equivalent gas-powered vehicle.

Plaintiff Steven DiMauro

17. Plaintiff Steven DiMauro is a Pennsylvania citizen who resides in Allentown, Pennsylvania.

18. On or about May 26, 2012, DiMauro purchased a used 2010 Jetta TDI from Young Volkswagen in Easton, Pennsylvania in the belief that the car was environmentally friendly and efficient while offering great performance and longevity. DiMauro purchased the vehicle primarily for his personal, family, and/or household purposes. The vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by Defendants, and bears Vehicle Identification Number 3VWAL7AJ6AM148578.

19. Prior to his purchase of the vehicle at issue, DiMauro saw many of defendants' commercials regarding TDIs and read several magazine articles about the vehicles. DiMauro also spoke with representatives of both Ciocca Volkswagen and Young Volkswagen about TDI vehicles prior to purchasing his car. DiMauro recalls that the

commercials and research he reviewed, as well as his discussions with representatives at the authorized dealerships, all discussed the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system.

20. None of the research reviewed or representations received by DiMauro (or other class members) contained any disclosure relating to the “defeat device,” the Emissions Defect, or that Defendants had purposefully falsified its certification of EPA compliance. Had Defendants disclosed that DiMauro’s vehicle actually emitted up to forty times the permitted levels of pollutants and that if the vehicle was brought into EPA compliance that its performance would change, he would not have purchased his vehicle with the CleanDiesel engine, or would have paid less for the vehicle.

21. DiMauro and Class Members have suffered an ascertainable loss as a result of Defendants’ omissions and/or misrepresentations associated with the Emissions Defect, including but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, and diminished value of his vehicle. Among, other things, DiMauro paid a premium over the price of an equivalent gas-powered vehicle.

Plaintiff Jeffery Manous

22. Plaintiff Jeffery Manous is a Texas citizen who resides in Hemphill, Texas.

23. In or about March 2012, Manous purchased a new 2012 Passat TDI from DeMontrond Volkswagen, an authorized Volkswagen dealership in Houston, Texas in the belief that the car was environmentally friendly and efficient while offering great performance, including exceptional gas mileage. Manous purchased the vehicle primarily for his personal, family, and/or household purposes. The vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by Defendants, and bears Vehicle

Identification Number 1VWBN7A36CC070095.

24. Prior to his purchase of the vehicle at issue, Manous saw commercials for the vehicle and also had extensive discussions with sales representatives from DeMontrond Volkswagen. Manous recalls that the commercials he saw, marketing materials he reviewed and conversations with the sales representatives all discussed the cleanliness of the engine system for the environment and the efficiency and power/performance of the engine system, including its exceptional gas mileage.

25. None of the representations received by Manous (or other class members) contained any disclosure relating to the “defeat device,” the Emissions Defect, or that Defendants had purposefully falsified its certification of EPA compliance. Had Defendants disclosed that Manous’s vehicle actually emitted up to forty times the permitted levels of pollutants and that if the vehicle was brought into EPA compliance that its performance would change, he would not have purchased his vehicle with the CleanDiesel engine, or would have paid less for the vehicle.

26. Having liked the 2012 Passat TDI so much and believing it was as advertised, on May 23, 2015 Manous purchased a new 2015 Passat TDI from DeMontrond Volkswagen. Manous also purchased the vehicle primarily for his personal, family, and/or household purposes. The vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by Defendants, and bears Vehicle Identification Number 1VWBV7A38FC094032.

27. Prior to his purchase of the 2015 Passat TDI, had additional discussions with sales representatives from DeMontrond Volkswagen, which reaffirmed his belief that he was purchasing a vehicle that was good for the environment and had exceptional gas mileage.

28. Manous and Class Members have suffered an ascertainable loss as a result of

Defendants' omissions and/or misrepresentations associated with the Emissions Defect, including but not limited to, out-of-pocket loss and future attempted repairs, future additional fuel costs, and diminished value of his vehicles. Among, other things, Manous paid a premium over the price of equivalent gas-powered vehicles.

The Defendants

29. Volkswagen Group of America, Inc., (which also does business as Audi of America, Inc.) is a corporation organized and in existence under the laws of the State of New Jersey with its headquarters located in Herndon, Virginia. VWoA also maintains corporate offices in Woodcliff Lake and Englewood Cliffs, New Jersey. At all times relevant herein, VWoA was engaged in the business of importing, marketing, distributing, warranting, servicing, repairing and selling automobiles and other motor vehicles and motor vehicle components in New Jersey and throughout the United States of America.

30. Volkswagen AG, located at Berliner Ring 2, 38440 Wolfsburg, Germany and Audi AG, located at Auto-Union-Str.2, D-85045, Ingolstadt, Germany, are automobile design, manufacturing, distribution, and servicing corporation organized under the laws of Germany doing business in all 50 states in the United States. Volkswagen AG is the parent of defendants VWoA and Audi. These defendants design, manufacture, distribute, market, service, repair, sell and lease vehicles, including the Class Vehicles, nationwide.

JURISDICTION AND VENUE

31. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§1332(d)(2) and (6) of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one

plaintiff and one defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

32. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because Defendant VWoA is a New Jersey corporation that maintains corporate offices in New Jersey, transacts business in this district, is subject to personal jurisdiction in this district, and therefore is deemed to be a citizen of this district. Additionally, Defendants have advertised in this district and have received substantial revenue and profits from their sales and/or leasing of Class Vehicles in this district; therefore, a substantial part of the events and/or omissions giving rise to the claims occurred, in part, within this district.

33. This Court has personal jurisdiction over Defendants. VWoA is a New Jersey corporation that maintains corporate offices in New Jersey. Upon information and belief, VWoA is the agent of Defendants VWAG and Audi and conducts all of their business in the United States. As such, Defendants have conducted substantial business in this judicial district, and intentionally and purposefully placed Class Vehicles into the stream of commerce within the districts of New Jersey and throughout the United States.

NEW JERSEY LAW SHOULD APPLY

34. To the extent that the Court determines that it is appropriate to engage in a choice of law analysis for purposes of deciding any motion to dismiss that may be filed by defendants, New Jersey's substantive laws should apply to the proposed Nationwide Class, as defined herein, because Plaintiffs properly brings this Complaint in this District.

35. New Jersey's substantive laws may be constitutionally applied to the claims of Plaintiffs and the Class Members under the Due Process Clause, 14th Amendment, § 1, and the Full Faith and Credit Clause, Art. IV., § 1, of the U.S. Constitution. New Jersey has

significant contact, or significant aggregation of contacts, to the claims asserted by Plaintiffs and all Class Members, thereby creating state interests that ensure that the choice of New Jersey state law is not arbitrary or unfair.

36. Specifically, VWoA is a New Jersey corporation and maintains multiple corporate offices in New Jersey. VWoA is also registered with the New Jersey State Business Gateway Service.

37. VWoA owns property and conducts substantial business in New Jersey and, therefore, New Jersey has an interest in regulating VWoA's conduct under its laws. VWoA's decision to organize itself under the laws of New Jersey, maintain corporate offices in New Jersey, and avail itself of New Jersey's laws renders the application of New Jersey law to the claims herein constitutionally permissible.

38. A substantial number of Class Members including the Plaintiffs also reside in New Jersey and some purchased their vehicles in New Jersey.

39. Upon information and belief, New Jersey is also the forum in which some of VWoA's misconduct emanated. This conduct similarly injured and affected Plaintiffs and all Class Members residing in the United States. For instance, on information and belief VWoA's "Product Liaison Group" is located in New Jersey. This group is responsible for, among other things, investigating vehicle defects, dealing with issues that might result in legal action, and communicating with VWAG and Audi. As a result, New Jersey is where some of the conduct causing injury to the Plaintiffs and Class Members occurred and from where it emanated.

40. The application of New Jersey's laws to the Nationwide Class is also appropriate under New Jersey's choice of law rules because New Jersey has significant

contacts to the claims of the Plaintiffs and the proposed Nationwide Class, and New Jersey has a greater interest in applying its laws here than any other interested state.

TOLLING OF STATUTES OF LIMITATION

41. Any applicable statute(s) of limitations has been tolled by Defendants' knowing and active concealment and denial of the facts alleged herein. Despite their due diligence, Plaintiffs and members of the class could not have reasonably discovered the Emissions Defect until shortly before this class action litigation was commenced.

42. Defendants were and remain under a continuing duty to disclose to Plaintiffs and Class Members the true character, quality and nature of the Class Vehicles and the Emissions Defect, that the Emissions Defect will require costly repairs that result in decreased vehicle performance, that the Emissions Defect a safety concern, and the Emissions Defect diminishes the resale value of the Class Vehicles. As a result of the active concealment by Defendants, any and all statutes of limitations otherwise applicable to the allegations herein have been tolled.

43. Moreover, because the Emissions Defect could not be detected due to Defendants purposefully fraudulent concealment and use of the "defeat device," Plaintiffs and the Class were not reasonably able to discover the Emissions Defect until long after purchasing or leasing the Class Vehicles, despite their exercise of due diligence. Therefore, the discovery rule is applicable to the claims asserted by Plaintiffs and the other Class Members.

44. Any applicable statute of limitation has therefore been tolled by Defendants' knowing, active concealment and denial of the facts alleged herein. Defendants are further estopped from relying on any statutes of limitation because of its concealment of the

Emissions Defect in the Class Vehicles.

FACTUAL ALLEGATIONS

45. For years, Defendants have designed, manufactured, distributed, imported, warranted, marketed, advertised, serviced, sold, and leased the Class Vehicles. Upon information and belief, Defendants have sold, directly or indirectly through dealers and other retail outlets, hundreds of thousands of Class Vehicles in New Jersey and nationwide.

46. Since 2008 or earlier, defendants have marketed the Class Vehicles as being more environmentally friendly, and as being more efficient in terms of gas mileage than previous diesel-powered cars, while maintaining enhanced vehicle performance compared to other diesel vehicles. Indeed, many of the marketing materials used by defendants stated that the “TDI Clean Diesel engine gives you long range without sacrifice.” Consumers, including the named Plaintiffs herein, purchased Class Vehicle in reliance on statements such as this.

47. Defendants’ 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 Defendants’ diesel engine marketing campaign. “CleanDiesel” is in the very name of the vehicles about which Defendants lied.

48. Defendants’ feigned concern for the environment goes beyond just the model names and purported attributes of their vehicles. For example, on the “Environment” page of its website, VWoA 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.”

49. Defendants have also marketed the fact that certain Class Vehicles have been

recognized as the “Green Car of the Year.”

50. Defendants have charged a substantial premium for the Class Vehicles. For example, for the 2015 Volkswagen Jetta, the base S (gas powered) model has a starting MSRP of \$18,780. The base Jetta TDI S, 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 Jetta TDI SEL MSRP is \$26,410, a \$6,315 premium.

51. Like all automobiles sold for public use in the U.S., the Class Vehicles were and are required under the Clean Air Act, 42 U.S.C. Section 7401, et seq., to be manufactured so that their emissions do not exceed certain standards for pollutants such as carbon monoxide and nitrogen oxide. Nitrogen oxide emissions contribute to nitrogen dioxide, ground-level ozone, and fine particulate matter. Exposure to these pollutants has been linked to serious health issues, including asthma attacks and other respiratory illness serious enough to send people to the hospital.

52. Regulations controlling the amount of pollutants such as nitrogen oxide are promulgated under the authority of the EPA. New cars sold in the United States are required to pass emission tests to ensure that the models as produced are in compliance with regulations. In addition, many states, including the state of California, require periodic testing for pollutants, commonly referred to as “smog” testing. California’s smog regulations are administered by the California Air Resources Board (“CARB”).

53. Most modern engines, including Defendants’ “CleanDiesel” engines, use computerized engine control systems (“ECM”) 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-to-air ratios, valve and ignition timing, and, as in Defendants' "CleanDiesel" engines, operating the engine's turbocharger. The ECM 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.

54. These ECMs also receive data from sensors in the car's exhaust system that measure the chemical composition of the car's exhaust. That data provides a measure of the engine's operation and efficiency, and is thus used by the ECM in operating the car's systems to ensure the desired performance and efficiency. Because modern cars include these sophisticated computers and sensors throughout the vehicle, emissions testing systems use 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 diagnostic device, use a measurement probe inserted into the car's exhaust pipe to measure the pollutants emitted.

55. Defendants programmed the ECMs in the Class Vehicles to detect when the cars are undergoing emissions testing, and then operates the vehicles's engine and exhaust systems to ensure that emissions comply with EPA standards. When the car is not being emissions-tested the engine control systems operate the vehicle in a manner that does not comply with EPA emissions requirements, but boosts vehicle performance.

56. The EPA accused Defendants of using software to detect when the car is undergoing its periodic State emissions testing. Contrary to the ordinary and expected

operation of emissions controls, which are designed to operate at all times, it is only during such tests that the Class Vehicles' full emissions control systems are turned on. During normal driving situations, the controls are turned off, allowing the cars to expel as much as forty times the amount of pollution as allowed under the Clean Air Act. This software produced and used in the Class Vehicles by defendants is a "defeat device" as defined by the Clean Air Act.

57. EPA officials issued VWoA a notice of violation and said VWoA had admitted to the use of a defeat device.

58. The pollutants that were artificially reduced by the defeat device are linked to a range of health problems, including asthma attacks, other respiratory diseases and premature death. Exposure to ozone and particulate matter has been associated with premature death due to respiratory and cardiovascular related effects. Children, the elderly, and people with pre-existing respiratory illnesses are at acute risk of adverse health effects from these pollutants.

59. The state of California has issued a separate notice of violation to Defendants. Upon information and belief, California, the EPA, the Justice Department and other governmental entities are working together on an investigation of the allegations.

60. The Clean Air Act 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 system during normal driving conditions, cannot be certified. By manufacturing and selling cars with defeat devices that allowed for higher

levels of emissions that were certified to EPA, defendants violated the Clean Air Act, defrauded its customers, and engaged in unfair competition under state and federal law.

61. VWoA has been ordered by the EPA to recall the Class Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation. However, Defendants will not be able to make the Class Vehicles comply with emissions standards without substantially degrading their performance characteristics, including their horsepower and their fuel efficiency.

62. As a result, even if Defendants are able to render the Class 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. This will necessarily result in a diminution in value of every Class Vehicle.

63. As a result of Defendants' unfair, deceptive, and/or fraudulent business practices, and its failure to disclose Emissions Defect, owners and/or lessees of the Class Vehicles have suffered losses in money and/or property. Had Plaintiffs and Class members known of the Emissions Defect at the time they purchased or leased their Class Vehicles, they would not have purchased or leased those vehicles, or would have paid substantially less for the vehicles than they did. Moreover, the Class Vehicles will necessarily be worth less in the marketplace because of the Emissions Defect.

64. Plaintiffs bring this action individually and on behalf of all other current and former owners or lessees of Class Vehicles. Plaintiffs seek damages, injunctive relief, and equitable relief for the conduct of Defendants related to the Emissions Defect, as alleged in this complaint.

CLASS ACTION ALLEGATIONS

65. Plaintiffs bring this lawsuit as a class action individually and all others similarly situated as members of the proposed classes pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

66. The Class and Sub-Classes are defined as:

Nationwide Class: All current and former owners or lessees of the Class Vehicles who purchased or leased a Class Vehicle in the United States.

California Sub-Class: All Members of the Nationwide Class who purchased or leased the subject vehicles in the state of California.

Maryland Sub-Class: All Members of the Nationwide Class who purchased or leased the subject vehicles in the state of Maryland.

Pennsylvania Sub-Class: All Members of the Nationwide Class who purchased or leased a Class Vehicle in the state of Pennsylvania.

Texas Sub-Class: All Members of the Nationwide Class who purchased or leased the subject vehicles in the state of Texas.

67. Excluded from the Class and Sub-Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; and (3) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserve the right to amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-Class should be expanded or otherwise modified.

68. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Members of the

Class are readily identifiable from information and records in defendants' possession, custody, or control, as well as from records kept by the Departments of Motor Vehicles throughout the country.

69. Typicality: The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, like all Class Members, purchased and/or leased a Class Vehicle with the Emissions Defect. The representative Plaintiffs, like all Class Members, have been damaged by Defendants' misconduct in that they purchased vehicles that are substantially less environmentally-friendly than they thought and when their vehicle are brought into EPA-compliance, they will have substantially less performance. Furthermore, the factual bases of Defendants' misconduct are common to all Class Members and represent a common thread of fraudulent, deliberate, and negligent misconduct resulting in injury to all Class Members.

70. Commonality: There are numerous questions of law and fact common to Plaintiffs and the Class which predominate over any questions affecting only individual Class Members. These common legal and factual issues include the following:

- a. Whether Defendants fraudulently concealed from and/or failed to disclose to the Plaintiffs and Class Members the Emissions Defect;
- b. Whether Defendants' conduct in selling and marketing the Class Vehicles with the Emissions Defect was negligent, wanton, or willful;
- c. Whether Defendants breached their express warranty to Plaintiffs and Class Members;
- d. Whether Defendants breached their implied warranty to Plaintiffs and Class Members;
- e. Whether the performance of the Class Vehicles is not as advertised and/or promoted by Defendants;
- f. Whether the Plaintiffs and the Class Members are entitled to damages and the amount of such damages; and

- g. Whether the Plaintiffs and the Class Members are threatened with irreparable harm and whether they are entitled to injunctive and/or other equitable relief, including requiring Defendants to reimburse the Class, repurchase and/or replace the Class Vehicles.

71. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiffs intend to prosecute this action vigorously

72. Predominance and Superiority: Plaintiffs and the other Class Members have all suffered and will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue without remedy. Class treatment of common questions of law and fact would also be superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

VIOLATIONS ALLEGED

COUNT I **BREACH OF EXPRESS WARRANTY** **(On Behalf of the Nationwide Class or,** **alternatively, the Sub-Classes)**

73. Plaintiffs and the Classes incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

74. This cause of action is brought against Defendant VWoA only.

75. VWoA expressly warranted that the Class Vehicles were fuel efficient and low emission vehicles and, at a minimum, complied with all EPA emission requirements. VWoA also expressly warranted that it would repair and/or replace defects in material and/or workmanship that manifested during the warranty period free of charge.

76. VWoA breached this warranty by selling to Plaintiffs and Class members the Class Vehicles with the Emissions Defect and which do not comply with EPA standards.

77. VWoA further breached this warranty by failing to repair and/or replace Plaintiffs' and other Class Members' defective vehicles when Defendants' fraud was exposed during the Warranty period.

78. VWoA has known of the Emissions Defect at least as early as 2008 and continues to have knowledge of its fraudulent conduct and breaches of its express warranty, yet has intentionally failed to notify Plaintiffs and members of the Class.

79. This intended failure to disclose known defect(s) is malicious, and was carried out with willful and wanton disregard for the rights and economic interests of Plaintiffs and the Class.

80. As a result of the VWoA's actions, Plaintiffs and Class members have suffered economic damages including but not limited to costly repairs, loss of vehicle use, substantial loss in value and resale value of the vehicles, and other related damage.

81. Defendants' breach of this warranty caused damages to Plaintiffs and the Class.

82. Defendants' attempt to disclaim or limit these express warranties vis-à-vis consumers is unconscionable and unenforceable under the circumstances here. Specifically,

Defendants' warranty limitation is unenforceable because they knowingly sold a defective product without informing consumers about the defect.

83. The time limits contained in Defendants' warranty period were also unconscionable and inadequate to protect Plaintiffs and members of the Class. Among other things, Plaintiffs and Class members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between VWoA and class members, and VWoA knew or should have known that the Class Vehicles were defective at the time of sale.

84. Plaintiffs and class members have complied with all obligations under the Warranty, or otherwise have been excused from performance of said obligations as a result of Defendants' conduct described herein.

COUNT II
BREACH OF WRITTEN WARRANTY UNDER THE MAGNUSON MOSS
WARRANTY ACT, 15 U.S.C. § 2301 *ET SEQ.*
(On Behalf of the Nationwide Class or,
alternatively, the Sub-Classes)

85. Plaintiffs and the Classes incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

86. This cause of action is brought against Defendant VWoA only.

87. Plaintiffs and the other Class members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

88. VWoA is a "supplier" and "warrantor" within the meaning of sections 2301(4)-(5).

89. The Class Vehicles are "consumer products" within the meaning of section 2301(1).

90. VWoA's express warranty is a "written warranty" within the meaning of section 2301(6).

91. VWoA breached the express warranty by:

- a. Extending a New Vehicle Limited Warranty with the purchase or lease of the Class Vehicles, thereby warranting to repair or replace any part defective in material or workmanship at no cost to the owner or lessee;
- b. Selling and leasing Class Vehicles with the Emissions Defect thereby rendering the entire vehicle defective in material and workmanship, requiring repair or replacement within the warranty period; and
- c. Refusing to honor the express warranty by repairing or replacing, free of charge, the engine and emission system or any of its component parts and instead charging for repair and replacement parts.

92. VWoA's breach of the express warranty has deprived the Plaintiffs and the other class members of the benefit of their bargain.

93. The amount in controversy of the Plaintiffs' individual claims meet or exceeds the sum or value of \$25,000. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

94. VWoA has been afforded a reasonable opportunity to cure its breach of written warranty.

95. As a direct and proximate cause of VWoA's breach of written warranty, Plaintiffs and class members sustained damages and other losses in an amount to be determined at trial. VWoA's conduct damaged Plaintiffs and class members, who are entitled to recover actual damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, rescission, and/or other relief as appropriate.

COUNT III
BREACH OF THE IMPLIED
WARRANTY OF MERCHANTABILITY
(On Behalf of the Nationwide Class or,
alternatively, the Sub-Classes)

96. Plaintiffs and the Classes incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

97. Defendants are a “merchants” as defined under the Uniform Commercial Code (“UCC”).

98. The Class Vehicles are “goods” as defined under the UCC.

99. Defendants impliedly warranted that the Class Vehicles were of a merchantable quality.

100. Defendants breached the implied warranty of merchantability, as the Class Vehicles were not of a merchantable quality due to Emissions Defect, caused by the defeat device surreptitiously installed on the Class Vehicles.

101. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Class were injured, and are entitled to damages.

102. Defendants’ attempt to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Defendants’ warranty limitation is unenforceable because they knowingly sold the Class Vehicles without informing consumers about the Emissions Defect.

103. The time limits contained in Defendants’ warranty period were also unconscionable and inadequate to protect Plaintiffs and members of the Class. Among other things, Plaintiffs and members of the Class had no meaningful choice in determining these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and the Class, and Defendants knew or should

have known that the Class Vehicles were defective at the time of sale.

104. Plaintiffs and class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of defendants' conduct described herein.

COUNT IV
VIOLATION OF THE NEW JERSEY
CONSUMER FRAUD ACT
(On Behalf of the Nationwide Class)

105. Plaintiffs and the Nationwide Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

106. The New Jersey Consumer Fraud Act ("NJCFA") protects consumers against "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.S.A. 56:8-2.

107. Plaintiffs and class members are consumers who purchased and/or leased Class Vehicles for personal, family, or household use.

108. Defendants engaged in unlawful conduct, made affirmative misrepresentations and material omissions, or otherwise violated the NJCFA.

109. Defendants also engaged in unlawful conduct in violation of the NJCFA by making knowing and intentional omissions. Defendants purposefully and knowingly failed to disclose the Emissions Defect in the Class Vehicles in order to secure the sale of these vehicles at a premium price and also to mislead owners during the limited warranty period to avoid having to perform their contractual duties under the warranty.

110. Defendants did not fully and truthfully disclose to its customers the true nature

the Class Vehicles, which was not readily discoverable until years later, sometimes after the warranty has expired.

111. Defendants intended that Plaintiffs and all class members rely on the acts of concealment and omissions, so that they would lease and/or purchase the Class Vehicles and not have the defects remedied under warranty.

112. As a result of Defendants' conduct, Plaintiffs and class members have suffered an ascertainable loss, including an ascertainable loss by receiving less than what was promised.

113. A causal relationship exists between Defendants' unlawful conduct and the ascertainable losses suffered by Plaintiffs and the class members. Had the presence of the Emissions Defect in the Class Vehicles been disclosed, consumers would not have purchased them, would have paid less for the Class Vehicles had they decided to purchase them, or would have presented their vehicles for repair of the Emissions Defect under warranty.

COUNT V

**Violation of California's Consumer Legal Remedies Act,
California Civil Code section 1750 *et seq.*
(On Behalf of the California Sub-Class)**

114. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

115. Plaintiff Martin brings this cause of action against Defendants on behalf of himself and on behalf of the members of the California Sub-Class.

116. Defendants are "person" as defined by California Civil Code § 1761(c).

117. Plaintiff and Class Members are "consumers" within the meaning of California Civil Code § 1761(d).

118. By failing to disclose and concealing the Emissions Defect from Plaintiff and prospective Class Members, Defendants violated California Civil Code § 1770(a), as they represented that their Class Vehicles and their diesel engines had characteristics and benefits that they do not have, and represented that their Class Vehicles and their diesel engines were of a particular standard, quality, or grade when they were of another. *See* Cal. Civ. Code §§ 1770(a)(5) & (7).

119. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

120. Defendants knew that the Class Vehicles and their diesel engines suffered from an inherent defect, were defectively designed or manufactured and were not suitable for their intended use.

121. Defendants was under a duty to Plaintiff and the other Class Members to disclose the Emissions Defect and/or the associated repair costs:

- a) Defendants were in a superior position to know the true state of facts about the Emissions Defect in the Class Vehicles;
- b) Plaintiff and the other Class Members could not reasonably have been expected to learn or discover the Emissions Defect until after they purchased the Class Vehicles; and
- c) Defendants knew that Plaintiff and the other Class Members could not reasonably have been expected to learn about or discover the Emissions Defect.

122. In failing to disclose the Emissions Defect, Defendants have knowingly and intentionally concealed material facts and breached its duty not to do so.

123. The facts concealed or not disclosed by Defendants to Plaintiff and the other Class Members are material in that a reasonable person would have considered them to be

important in deciding whether or not to purchase Defendants' Class Vehicles, or to pay less for them. Had Plaintiff and the other Class Members known that the Class Vehicles' contained the Emissions Defect, they would not have purchased the Class Vehicles or would have paid less for them.

124. Plaintiff and the other Class Members are reasonable consumers who do not expect their convertible tops to fail to open or close properly. Plaintiff and the other Class Members further expect and assume that Defendants will not sell or lease vehicles with known safety defects, such as the Emissions Defect.

125. As a direct and proximate result of Defendants' unfair or deceptive acts or practices, Plaintiff and the other Class Members have suffered and will continue to suffer actual damages.

126. Plaintiff and the Class are entitled to equitable relief.

127. Plaintiff provided Defendants with notice of its alleged violations of the CLRA pursuant to California Civil Code § 1782(a). If, within 30 days, Defendants fail to provide appropriate relief for their violations of the CLRA, Plaintiff will amend this Complaint to seek monetary, compensatory, and punitive damages, in addition to the injunctive and equitable relief that he seeks now.

COUNT VI
Violation of California Business & Professions Code § 17200, *et seq.*
(On Behalf of the California Sub-Class)

128. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

129. Plaintiff Martin brings this cause of action against Defendant on behalf of himself on behalf of the California Sub-Class.

130. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.”

131. Defendants knew that the Class Vehicles and their diesel engines suffered from an inherent defect, were defectively designed or manufactured, and were not suitable for their intended use.

132. In failing to disclose the Emissions Defect, Defendants have knowingly and intentionally concealed material facts and breached their duty not to do so.

133. Defendants were under a duty to Plaintiff and the other Class Members to disclose the defective nature of the Class Vehicles and their defective diesel engines because:

- a. Defendants were in a superior position to know the true state of facts about the safety defect in the Class Vehicles;
- b. Defendants made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles; and
- c. Defendants actively concealed the defective nature of the Class Vehicles from Plaintiff and the other Class Members.

134. The facts concealed or not disclosed by Defendants to Plaintiff and the other Class Members are material in that a reasonable person would have considered them to be important in deciding whether or not to purchase Defendants’ Class Vehicles, or to pay less for them. Had Plaintiff and other Class Members known that the Class Vehicles suffered from the Emissions Defect, they would not have purchased the Class Vehicles or would have paid less for them.

135. Defendants continued to conceal the defective nature of the Class Vehicles and diesel even after Class Members began to report problems and government agencies began investigating their emissions.

136. By its conduct, Defendants have engaged in unfair competition and unlawful,

unfair, and fraudulent business practices.

137. Defendants' unfair or deceptive acts or practices occurred repeatedly in Defendants' trade or business, and were capable of deceiving a substantial portion of the purchasing public. Indeed, Defendants have an affirmative duty under UCL to disclose material safety facts to consumers and failed to do so in connection with the Class Vehicles.

138. As a direct and proximate result of Defendants' unfair and deceptive practices, Plaintiffs and the Class have suffered and will continue to suffer actual damages.

139. Defendants have been unjustly enriched and should be required to make restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business & Professions Code.

COUNT VII
BREACH OF IMPLIED WARRANTY PURSUANT TO
SONG-BEVERLY CONSUMER WARRANTY ACT,
CALIFORNIA CIVIL CODE SECTIONS 1792 AND 1791.1 ET. SEQ.
(On Behalf of the California Sub-Class)

140. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

141. Defendants were at all relevant times the manufacturer, distributor, warrantor, and/or seller of the Class Vehicles. Defendants knew or had reason to know of the specific use for which the Class Vehicles were purchased.

142. Defendants provided Plaintiff Martin and Class Members with an implied warranty that the Class Vehicles and their diesel engines are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles and their diesel engines are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles and their diesel engines are defective due

to the Emissions Defect and the resulting damage and safety-related hazards that it can cause.

143. Plaintiffs relied on implied warranties of merchantability made by Defendants concerning the Class Vehicles and sustained substantial damages resulting from the breach of those warranties by the Defendants.

144. Plaintiffs and Class Members purchased the Class Vehicles within the State of California. Defendants impliedly warranted that the Class Vehicles were of merchantable quality and fit for such use at the time of sale. This implied warranty included, among other things: (a) a warranty that the Class Vehicles were manufactured, supplied, distributed, and/or sold by Defendants were safe for providing safe and reliable transportation; and (b) a warranty that the Class Vehicles would be fit for their intended use when they are driven within their range of operation and during foreseeable and normal usage.

145. Contrary to the applicable implied warranties, the Class Vehicles at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and the Class Members with durable and safe transportation during normal and/or foreseeable usage. Instead, the Class Vehicles are defective. These defects include, but are not limited to, the Emissions Defect.

146. Defendants' actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use in violation of California Civil Code sections 1792 and 1791.1.

COUNT VIII
VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT,
MD. CODE COM. LAW § 13-101, ET SEQ.
(On Behalf of the Maryland Sub-Class)

147. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

148. Defendants, Plaintiff Tredo, and the Maryland Subclass are “persons” within the meaning of MD. CODE COM. LAW § 13-101(h).

149. The Maryland Consumer Protection Act (“Maryland CPA”) provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. MD. COM. LAW CODE § 13-303. 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, Defendants engaged in deceptive business practices prohibited by the Maryland CPA.

150. Defendants’ actions as set forth above occurred in the conduct of trade or commerce.

151. In the course of business, Defendants 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.

152. Defendants 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 Class Vehicles.

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

154. Defendants were also aware that they valued profits over environmental cleanliness, efficiency, and lawfulness, and that they were manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations.

Defendants concealed this information as well.

155. 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, Defendants engaged in unfair and deceptive business practices in violation of the Maryland CPA.

156. In the course of Defendants’ business, they 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. Defendants 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 reputable manufacturers that valued safety, environmental cleanliness and efficiency, and stood behind their vehicles once they are on the road.

157. Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the CleanDiesel engine system, the quality of the Volkswagen and brands, and the true value of the Class Vehicles.

158. Defendants intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with an intent to mislead Plaintiff and the Maryland Subclass.

159. Defendants knew or should have known that its conduct violated the Maryland CPA.

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

161. Defendants owed Plaintiff and Class Members a duty to disclose the true safety, cleanliness, efficiency and reliability of the Class Vehicles, because Defendants:

- a) Possessed exclusive knowledge that they valued profits over environmental cleanliness, efficiency, and lawfulness, and that they were manufacturing, selling and distributing vehicles throughout the United States that did not comply with EPA regulations;
- b) Intentionally concealed the foregoing from Plaintiff and Class Members; and/or
- c) Made incomplete representations about the safety, cleanliness, efficiency and reliability of the Class 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 Plaintiffs that contradicted these representations.

162. Because Defendants 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 Class Vehicles has greatly diminished. In light of the stigma attached to those vehicles by Defendants’ conduct, they are now worth significantly less than they otherwise would be.

163. Defendants’ fraudulent use of the “defeat device” and its concealment of the true characteristics of the CleanDiesel engine system were material to Plaintiff 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.

164. Plaintiff and the Maryland Subclass suffered ascertainable loss caused by

Defendants' misrepresentations and their 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.

165. Defendants 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 Class Vehicles suffered ascertainable loss in the form of the diminished value of their vehicles as a result of Defendants' deceptive and unfair acts and practices made in the course of their business.

166. Defendants' violations present a continuing risk to Plaintiff as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

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

168. Pursuant to MD. CODE COM. LAW § 13-408, Plaintiff and the Maryland Subclass seek actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.

COUNT IX
VIOLATIONS OF THE UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW 73 Pa. C.S. § 201-1 *et seq.*
(On Behalf of the Pennsylvania Sub-Class)

169. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

170. At all times relevant hereto, Defendants were engaged in trade or commerce as defined in the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §201-2(3).

171. The UTPCPL proscribes, *inter alia*, engaging in any "unfair or deceptive acts

or practices,” either at, and prior to or subsequent to a consumer transaction, including but not limited 73 P.S. § 201-2(4)(vii), (viii), (ix), (xiv) and (xxi).

172. Plaintiff DiMauro and members of the Pennsylvania Sub-Class are consumers who purchased and/or leased Class Vehicles for personal, family or household use.

173. Defendants engaged in unlawful conduct, intentionally or recklessly made affirmative misrepresentations or omitted to state the truth, or otherwise violated the UTPCPL. Specifically, Defendants were aware that the Class Vehicles contained a “defeat device” and otherwise contained the Emissions Defect, but failed to disclose this to Plaintiff or the Pennsylvania Sub-Class. Defendants also marketed these vehicles as being of superior quality when the Class Vehicles contained a known defect. These affirmative misrepresentations were material to the vehicle purchases, and were false statements of fact.

174. Defendants also engaged in unlawful conduct in violation of the UTPCPL by making knowing and intentional omissions. Defendants knowingly failed to disclose the Emissions Defect in the Class Vehicles in order to secure the sale of these vehicles, and to offer them at a premium price.

175. Defendants did not fully and truthfully disclose to its customers the true nature of the Emissions Defect, which due to the Defendants’ purposeful concealment was not readily discoverable until well after the purchase and/or lease. As a result, Plaintiff and the Pennsylvania Sub-Class were fraudulently induced to lease and/or purchase the Class Vehicles with the Emissions Defect. These facts that Defendants concealed were solely within their possession. Defendants intended that Plaintiff and all Pennsylvania Sub-Class Members rely on the acts of concealment and omissions, so that they would purchase the Class Vehicles.

176. Pursuant to 73 P.S. and § 201-9.2, Plaintiff and members of the Pennsylvania Sub-Class are entitled to recover and hereby seek actual damages, or three times actual damages.

177. Defendants' conduct caused Plaintiff and the Pennsylvania Sub-Class to suffer an ascertainable loss. In addition to direct monetary losses, Plaintiff and the Pennsylvania Sub-Class have suffered an ascertainable loss by receiving less than what was promised.

178. A causal relationship exists between Defendants' unlawful conduct and the ascertainable losses suffered by Plaintiff and the Pennsylvania Sub-Class. Had the Emissions Defect in the Class Vehicles been disclosed, consumers would not have purchased them or would have paid less for the Class Vehicles had they decided to purchase them.

COUNT X
VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT,
TEX. BUS. & COM. CODE §§ 17.41, et seq.
(On Behalf of the Texas Sub-Class)

179. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

180. Plaintiff Manous intends to assert a claim under the Texas Deceptive Trade Practices Act ("TDTPA"), which makes it unlawful to commit "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." TEX. BUS. & COM. CODE § 17.46.

181. Plaintiff will make a demand in satisfaction of TEX. BUS. & COM. CODE § 17.45(2), and may amend this Complaint to assert claims under the TDTPA once the required 60 days have elapsed. This Count is included for purposes of notice only and is not intended to actually assert a claim under the TDTPA.

COUNT XI
COMMON LAW FRAUD
(On Behalf of the Nationwide Class or,
alternatively, the Sub-Classes)

182. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

183. Defendants made material misrepresentations and omissions concerning a presently existing or past fact. For example, Defendants did not fully and truthfully disclose to their customers the true nature of the Class Vehicles including the fact that they contained the Emissions Defect, which was not readily discoverable until years later, sometimes after the warranty has expired. As a result, Plaintiffs and the other class members were fraudulently induced to lease and/or purchase the Class Vehicles, and also not present their vehicles to an authorized repair facility during the warranty period to have the Emissions Defect remedied at no cost.

184. These omissions and statements were made by Defendants with knowledge of their falsity, and with the intent that Plaintiffs and class members rely on them.

185. Plaintiffs and class members reasonably relied on these statements and omissions, and suffered damages as a result.

COUNT XII
BREACH OF THE DUTY OF GOOD FAITH
AND FAIR DEALING
(On Behalf of the Nationwide Class or,
alternatively, the Sub-Classes)

186. Plaintiffs and the Classes incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

187. Every contract contains an implied covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing is an independent duty and may be

breached even if there is no breach of a contract's express terms.

188. Defendants breached the covenant of good faith and fair dealing by, *inter alia*, failing to notify Plaintiffs and class members that the Class Vehicles contained a defeat device, as well as misrepresenting the true emissions and performance levels of the Class Vehicles.

189. Defendants acted in bad faith and/or with a malicious motive to deny Plaintiffs and Class Members the benefit of the bargain originally intended by the parties, thereby causing them injuries in an amount to be determined at trial.

COUNT XIII
UNJUST ENRICHMENT
(On Behalf of the Nationwide Class or,
alternatively, the Sub-Classes)

190. Plaintiffs and the Classes incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

191. As a direct and proximate result of Defendants' failure to disclose the Emissions Defect and material misrepresentations regarding emission and performance levels in the Class Vehicles, Defendants have profited through the sale and lease of said vehicles by charging a premium to Plaintiffs and Class Members that was otherwise inapplicable to equivalent gasoline-powered models.

192. Defendants have therefore been unjustly enriched due to the Emissions Defect in the Class Vehicles through the use of funds that earned interest or otherwise added to Defendants' profits when said money should have remained with Plaintiffs and class members.

193. As a result of the Defendants' unjust enrichment, Plaintiffs and class members have suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Class, respectfully requests that this Court:

- a. enter an order certifying the proposed Class and Sub-Class, designating Plaintiffs as named representative of the Class, and designating the undersigned as Class Counsel;
- b. declare that Defendants are financially responsible for notifying all Class Members about the Emissions Defect;
- c. enter an order enjoining Defendants from further deceptive distribution, sales, and lease practices with respect to Class Vehicles, and to replace Plaintiffs and Class Members' vehicles and/or engine and emission systems with a suitable alternative product;
- d. award to Plaintiffs and the Class for compensatory, exemplary, statutory damages, treble and punitive damages, including interest, in an amount to be proven at trial;
- e. award any and all remedies provided pursuant to statutory consumer fraud acts;
- f. declare that Defendants must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of the Class Vehicles, the repairs made to Class Vehicles and the sale of replacement parts, or make full restitution to Plaintiffs and class members;
- g. award of attorneys' fees and costs, as allowed by law;
- h. award of pre-judgment and post-judgment interest, as provided by law;
- i. grant leave to amend the Complaint to conform to the evidence produced during discovery and at trial; and
- j. Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

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

Dated: October 14, 2015

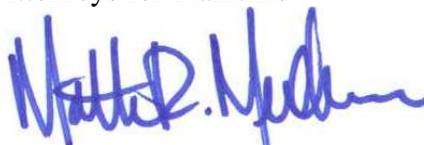
By: 

Matthew Mendelsohn
Adam M. Slater
David A. Mazie
MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, New Jersey 07068
Telephone: (973) 228-9898
mmendelsohn@mskf.net
aslater@mskf.net
dmazie@mskf.net

LOCAL CIVIL RULE 11.2 CERTIFICATION

I hereby further certify that to the best of my knowledge that there are dozens of cases that have been filed throughout the United States against Defendants related to the Emissions Defect. With more cases being filed every hour, it is impossible to provide this Court with a comprehensive list of the potentially related cases. That being said, I certify that at least the following cases in this District are known to be related: **2:15-cv-07012-JLL-JAD, 2:15-cv-07086-JLL-JAD and 2:15-cv-07141-JLL-JAD.**

MAZIE SLATER KATZ & FREEMAN, LLC
Attorneys for Plaintiffs



MATTHEW R. MENDELSON

Dated: October 14, 2015

JS44

CIVIL COVER SHEET

(Rev. 07/86)

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, 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 THE REVERSE OF THE FORM)

<p>1(a) PLAINTIFFS Jeremy Martin</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: California (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>DEFENDANTS Volkswagen Group of America, Inc., Audi AG, Volkswagen AG</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (Foreign Corporation) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Bergen County, New Jersey</p>
---	--

<p>(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER) Matthew R. Mendelsohn, Esq. MAZIE SLATER KATZ & FREEMAN, LLC 103 Eisenhower Parkway Roseland, NJ 07068 (973) 228-9898</p>	<p>ATTORNEYS (IF KNOWN) Unknown</p>
---	---

<p>II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="checkbox"/> US Government Plaintiff <input type="checkbox"/> Federal Question (U.S. Gov't Not a Party)</p> <p><input type="checkbox"/> US Government Defendant <input checked="" type="checkbox"/> Diversity* (indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only) (Place an X in one box for Plaintiff and one box for Defendant)</p> <table style="width:100%; border: none;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">P</td> <td style="width:33%; text-align: center;">D</td> </tr> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Citizen/Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> <p>Incorporated or Principal Place of Business in this State: <input type="checkbox"/> Incorporated & Principal Place of Business in Another State: <input type="checkbox"/> Foreign Nation: <input type="checkbox"/></p>		P	D	Citizen of this State	<input type="checkbox"/>	<input type="checkbox"/>	Citizen of Another State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Citizen/Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>
	P	D											
Citizen of this State	<input type="checkbox"/>	<input type="checkbox"/>											
Citizen of Another State	<input checked="" type="checkbox"/>	<input type="checkbox"/>											
Citizen/Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>											

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE) (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) Class Action Fairness Act, 28 U.S.C. §1332

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

<p>CONTRACT</p> <p><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 and Enforcement of Judgment <input type="checkbox"/>151 Medicare Act <input type="checkbox"/>152 Recovery of Defaulted Student Loans (excl. veterans) <input type="checkbox"/>153 Recovery of Overpayment of Veterans Benefits <input checked="" type="checkbox"/>160 Stockholders Suits <input checked="" type="checkbox"/>190 Other Contract <input type="checkbox"/>195 Other Product Liability</p> <p>REAL PROPERTY</p> <p><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</p>	<p>PERSONAL INJURY</p> <p><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</p> <p>CIVIL RIGHTS</p> <p><input type="checkbox"/>441 Voting</p>	<p>TORTS</p> <p>Personal Injury</p> <p><input type="checkbox"/>362 Personal Injury-Med. Malpractice <input type="checkbox"/>365 Personal Injury-Product Liability <input type="checkbox"/>368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/>370 Other Fraud <input type="checkbox"/>371 Truth in Lending <input type="checkbox"/>380 Other Personal Property Damage <input type="checkbox"/>385 Property Damage Product Liability</p> <p>PRISONER PETITIONS</p> <p><input type="checkbox"/>510</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/>610 Agriculture <input type="checkbox"/>620 Food & Drug <input type="checkbox"/>630 Liquor Laws <input type="checkbox"/>640 R.R. & Truck <input type="checkbox"/>650 Airline Regulations <input type="checkbox"/>660 Occupational Safety/Health <input type="checkbox"/>690 Other</p> <p>LABOR</p> <p><input type="checkbox"/>710 Fair Labor Standards Act <input type="checkbox"/>720 Labor/Mgmt. Relations <input type="checkbox"/>730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/>740 Railway Labor Act <input type="checkbox"/>790 Other Labor Litigation <input type="checkbox"/>791 Empl. Ret. Inc. Security Act</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/>422 Appeal 28 USC 158 <input type="checkbox"/>423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/>820 Copyrights <input type="checkbox"/>830 Patent <input type="checkbox"/>840 Trademark</p> <p>SOCIAL SECURITY</p> <p><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 SSHD Title XVI <input type="checkbox"/>865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/>870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/>871 IRS-Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/>400 State Reappointment <input type="checkbox"/>410 Antitrust <input type="checkbox"/>430 Banks and Banking <input type="checkbox"/>450 Commerce/ICC Rates/etc. <input type="checkbox"/>460 Deportation <input type="checkbox"/>470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/>810 Selective Service <input type="checkbox"/>850 Securities/Commodities/Exchange <input type="checkbox"/>875 Customer Challenge 12 USC 3410 <input type="checkbox"/>891 Agricultural Acts <input type="checkbox"/>892 Economic Stabilization Act <input type="checkbox"/>893 Environmental Matters <input type="checkbox"/>894 Energy Allocation Act <input type="checkbox"/>895 Freedom of Information Act <input type="checkbox"/>900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/>950 Constitutionality of State Statutes 890 Other Statutory Actions</p>
--	---	--	---	---	---

VI. 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 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23: DEMAND \$: in excess of \$5,000,000.00 JURY DEMAND: Yes No (Check Yes only if demanded in complaint:)

VII. RELATED CASE(S) (See instructions): **To the best of my knowledge that there are dozens of cases that have been filed throughout the United States against Defendants related to the Emissions Defect. With more cases being filed every hour, it is impossible to provide this Court with a comprehensive list of the potentially related cases. That being said, I certify that at least the following cases in this District are known to be related: 2:15-cv-07012-JLL-JAD, 2:15-cv-07086-JLL-JAD and 2:15-cv-07141-JLL-JAD.**

DATE: **October 14, 2015** SIGNATURE OF ATTORNEY OF RECORD:  **MATTHEW R. MENDELSON**