

JOSEPH C. WILSON (#249027)
jwilson@curialewilson.com
MICHELLE T. DUVAL (#239497)
mduval@curialewilson.com
CURIALE WILSON LLP
One Maritime Plaza, Suite 1000
San Francisco, CA 94111
Tel: (415) 908-1001 / Fax: (415) 796-0875

JOSEPH W. COTCHETT (#36324)
jcotchett@cpmlegal.com
FRANK M. PITRE (#100077)
fpitre@cpmlegal.com
NANCY L. FINEMAN (#124870)
nfineman@cpmlegal.com
ALISON E. CORDOVA (#284942)
acordova@cpmlegal.com
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road
Burlingame, CA 94010
Tel: (650) 697-6000 / Fax: (650) 692-3606

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**DANIEL McGARRY, individually, and on
behalf of all others similarly situated,**

Plaintiff,

v.

**VOLKSWAGEN GROUP OF
AMERICA, INC.,**

**VOLKSWAGEN
AKTIENGESELLSCHAFT,**

AUDI AG

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1. Violation of Magnuson-Moss Warranty Act
2. Violation of California Consumers Legal Remedies Act
3. Violation of California B&P § 17200
4. Violations of California B&P § 17500
5. Common Law Fraud
6. Breach of Implied Warranty
7. Breach of Express Warranty

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1 Plaintiff DANIEL McGARRY (hereinafter, “**Plaintiff**”), by and through his attorneys,
 2 bring this action on behalf of himself and all others similarly situated against Volkswagen
 3 Aktiengesellschaft (hereinafter, “Volkswagen AG”), Volkswagen Group of America, Inc., and
 4 Audi AG (collectively hereinafter, “**Volkswagen**”). Plaintiff alleges the following upon
 5 information and belief, except as to those allegations that pertain to the named Plaintiff:

6 **I. NATURE OF THE ACTION**

7 1. “Volkswagen AG CEO Martin Winterkorn touted his company’s efforts on
 8 Monday [July 19, 2010] to grow to be the world’s biggest car maker, including an expansion of
 9 its new car lab in the Bay Area. ‘We want to take Volkswagen to the top of the industry by
 10 2018,’ Volkswagen CEO Martin Winterkorn told reporters at the company’s Electronics Research
 11 Laboratory in Palo Alto.”¹ This statement followed Volkswagen’s pronouncements in its 2009
 12 Sustainability Report that: “We aim to be the most eco-friendly automaker in the world” and
 13 “For Volkswagen, ‘green mobility’ means setting new ecological standards in automobile
 14 manufacturing in order to put the cleanest, most economical and at the same time most fascinating
 15 cars on the road.”²

16 2. By 2015, Volkswagen seemed poised on its way to meet these goals. As the
 17 Executive Director of Volkswagen Group of America, Electronics Research Laboratory, Ewald
 18 Goessmann emphasized in a June 29, 2015 Press Release issued from Belmont, California
 19 regarding test results on alternative fuels: “Evaluations like this are part of Volkswagen’s broader
 20 holistic environmental strategy which underscores the company’s commitment to the environment
 21 by deploying a comprehensive approach which addresses carbon reduction and sustainability at
 22 each part of the vehicle lifecycle.”

23 3. By September 2015, however, the truth came out. Volkswagen had, since model
 24 year 2009, developed a scheme to evade compliance with United States emissions standards by

25
 26 ¹ Silicon Valley/San Jose *Business Journal* (July 20, 2010).

27 ²2009 Volkswagen 2009 Sustainability Report found at
 28 http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2009/09/sustainability_report0.bin.html/binarystorageitem/file/VW_Sustainability_Report_2009.pdf

1 the installation of software deliberately designed to fool testing devices and conceal the fact that
 2 certain models of their diesel vehicles released emissions up to 40 times higher than what was
 3 legally permitted under normal driving conditions. These harmful emissions of the pollutant
 4 nitrogen oxide (hereinafter, "NOx") contributes to the creation of ozone and smog. The pollutants
 5 are known to be linked to numerous debilitating respiratory diseases.

6 4. Volkswagen's brand has been severely tarnished and the value of its cars has
 7 plummeted. CEO Winterkorn was forced to state: "Millions of people all over the world trust
 8 our brand, our cars, and our technology. I am deeply sorry we have broken this trust. I would like
 9 to make a formal apology to our customers, to the authorities, and to the general public for this
 10 misconduct." On September 23, 2015, Winterkorn resigned as CEO of Volkswagen, stating that
 11 *"[a]bove all, I am stunned that misconduct on such a scale was possible in the Volkswagen*
 12 *Group."*³

13 5. Plaintiff, on behalf of himself and on behalf of a class of California residents who
 14 purchased or leased Class Vehicles⁴ (hereinafter, "**Class Members**"), brings this action
 15 challenging Volkswagen's deceptive representations and omissions regarding the emissions
 16 standards compliance and environmental-friendliness of nearly 500,000 U.S. vehicles in the 2009
 17 to 2015 model years. As part of Volkswagen's broad-based media advertising campaign designed
 18 to capitalize on public concern over human-induced climate change, Volkswagen utilized high-
 19 impact television, the Internet, and print advertisements that misleadingly touted the fuel
 20 economy, power, and "green" credentials of Volkswagen's supposedly "clean" diesel vehicles.
 21 *Volkswagen claimed that the vehicles met or exceeded federal emissions standards when to the*
 22 *contrary – the vehicles were built with sophisticated software designed to cheat environmental*
 23 *pollution standards.*

24 6. Volkswagen's scheme may have succeeded except for investigations, started in
 25 2014 by the California Air Resources Board and the Environmental Protection Agency. On or

26 ³ See Fox Business's "Volkswagen CEO Resigns Amid Emissions Scandal" by Matthew Rocco, September 23, 2015.
 27 <http://www.foxbusiness.com/business-leaders/2015/09/23/volkswagen-ceo-resigns-amid-emissions-scandal/>.

28 ⁴ See definition of "Class Vehicles" in Paragraph 8, *infra*, and definition of the "Class" in Paragraph 79, *infra*.

1 about September 18, 2015, the Obama Administration (hereinafter, “**Administration**”) issued a
 2 recall order that Volkswagen intentionally manipulated the emissions systems of approximately
 3 500,000 U.S. vehicles over multiple model years. Exhibit 1. The Administration exposed
 4 Volkswagen’s illegal conduct by directing Volkswagen to recall all diesel-power vehicles in
 5 which Volkswagen had illegally placed software in an effort to bypass requisite standards for
 6 reducing smog.

7 7. Specifically, Volkswagen knowingly and intentionally manipulated its vehicles’
 8 emissions systems to deceitfully operate by installing so-called “*defeat devices*”⁵ designed to
 9 evade mandatory periodic state emissions testing. Equipped with these devices, Volkswagen’s
 10 vehicles emit significantly less harmful emissions during testing than during normal driving
 11 conditions. During *regular* operation of Volkswagen’s supposedly environmentally-friendly
 12 vehicles, the vehicles in fact emit *up to 40 times*⁶ *the standard permitted* by United States laws
 13 and regulations. The defeat devices in Volkswagen’s vehicles operate by concealing the vehicles’
 14 emission of the pollutant NOx, which contributes to the creation of ozone and smog. The
 15 pollutants are known to be linked to numerous debilitating respiratory diseases including asthma
 16 attacks, bronchitis, and emphysema. Other correlated health ailments include lung damage and
 17 premature death.⁷

18 8. Volkswagen’s deliberate scheme impacted at least the vehicles listed in the below
 19 table (hereinafter, the “**Class Vehicles**”). Further investigation may uncover additional vehicle
 20 models and model years affected by Volkswagen’s illegal ploy.

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22 _____
 23 ⁵ The United States Environmental Protection Agency (“EPA”) announced on September 18, 2015 that the “software
 24 produced by Volkswagen is a ‘defeat device,’ as defined by the Clean Air Act.” See
<http://yosemite.epa.gov/opa/admpress.nsf/a883dc3da7094f97852572a00065d7d8/dfc8e33b5ab162b985257ec40057813b!OpenDocument>.

25 ⁶ See
 26 <http://yosemite.epa.gov/opa/admpress.nsf/a883dc3da7094f97852572a00065d7d8/dfc8e33b5ab162b985257ec40057813b!OpenDocument>.

27 ⁷ See U.S. National Library of Medicine’s Tox Town (Environmental health concerns and toxic chemicals where you
 28 live, work, and play): “Nitrogen Oxides” at http://toxtown.nlm.nih.gov/text_version/chemicals.php?id_19. Last
 accessed September 22, 2015.

<i>Model Year</i>	<i>EPA Test Group</i>	<i>Make and Model(s)</i>
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.04US	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

9. As a result of Volkswagen's illegal conduct, every proposed Class Vehicle was deceitfully sold to consumers based on knowingly false representations concerning the actual environmental friendliness, fuel efficiency and performance of the vehicle. Volkswagen's widespread advertising based on these same factors for the Class Vehicles was also false and misleading.

10. Volkswagen's misrepresentations and omissions regarding the Class Vehicles' environmental credentials, fuel efficiency and performance in their advertising, public statements, and marketing information were a material factor in inducing Plaintiff and Class Members to purchase the Class Vehicles. As a result of Volkswagen's scam, *nearly 11 million conscientious consumers* worldwide purchased the Class Vehicles based on misleading and downright false claims of the vehicle's attributes. Had Plaintiff and Class Members known that the Class Vehicle's appealing combination of high fuel mileage and performance, with low emissions, were but a calculated scheme by Volkswagen to stealthily defeat environmental protection standards, Plaintiff and Class Members would not have purchased or leased their respective Class Vehicles, or in the alternative, Plaintiff and Class Members would have paid significantly less for the vehicles than they did.

11. This lawsuit seeks to remedy Volkswagen's premediated scheme to defraud the public.

1 **II. THE PARTIES**

2 **A. Plaintiff Daniel McGarry**

3 12. Plaintiff Daniel McGarry is a resident of San Francisco, California, and a
4 product manager for Twitter in San Francisco, California. In 2015, he purchased a Model Year
5 2014 VW Jetta Sportwagon TDI. Plaintiff purchased the Jetta specifically because it was
6 advertised as being a clean, environmentally-friendly vehicle that also provided excellent power,
7 performance, and fuel mileage. Plaintiff conducted extensive research on the Jetta and competing
8 vehicles before purchasing the Jetta. Plaintiff would not have purchased the vehicle but for
9 Volkswagen's representations regarding the "clean" emissions characteristics of the Jetta
10 Sportwagon TDI.

11 **B. Defendant Volkswagen Aktiengesellschaft**

12
13
14 **VOLKSWAGEN**

15 **AKTIENGESELLSCHAFT**

16 13. Established in 1937, Defendant Volkswagen Aktiengesellschaft (hereinafter,
17 "Volkswagen AG") is a German car corporation organized and existing under the laws of
18 Germany, with its principal place of business located in Wolfsburg, Germany. Volkswagen AG is
19 the parent company of Volkswagen Group of America, Inc., also named as a Defendant in this
20 Complaint. All three Defendants (Volkswagen AG, Audi AG, and Volkswagen Group of
21 America, Inc.) are collectively referred to in this complaint as "Volkswagen."

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C. Defendant Audi AG



14. In 1964, Volkswagen AG acquired Auto Union, and in 1969, Volkswagen AG acquired NSU Motorenwerke AG. Volkswagen AG merged Auto Union and NSU to create Audi AG (hereinafter, “Audi”), which has since been developed into Volkswagen’s luxury vehicle brand. Audi is a German automobile manufacturer that designs, engineers, produces, markets, and distributes luxury automobiles, and is a majority owned (99.55%) subsidiary of Volkswagen AG. Since 2007, Audi has used the slogan “Truth in Engineering,” and is among the best-selling luxury automobiles in the world.

D. Defendant Volkswagen Group of America, Inc.

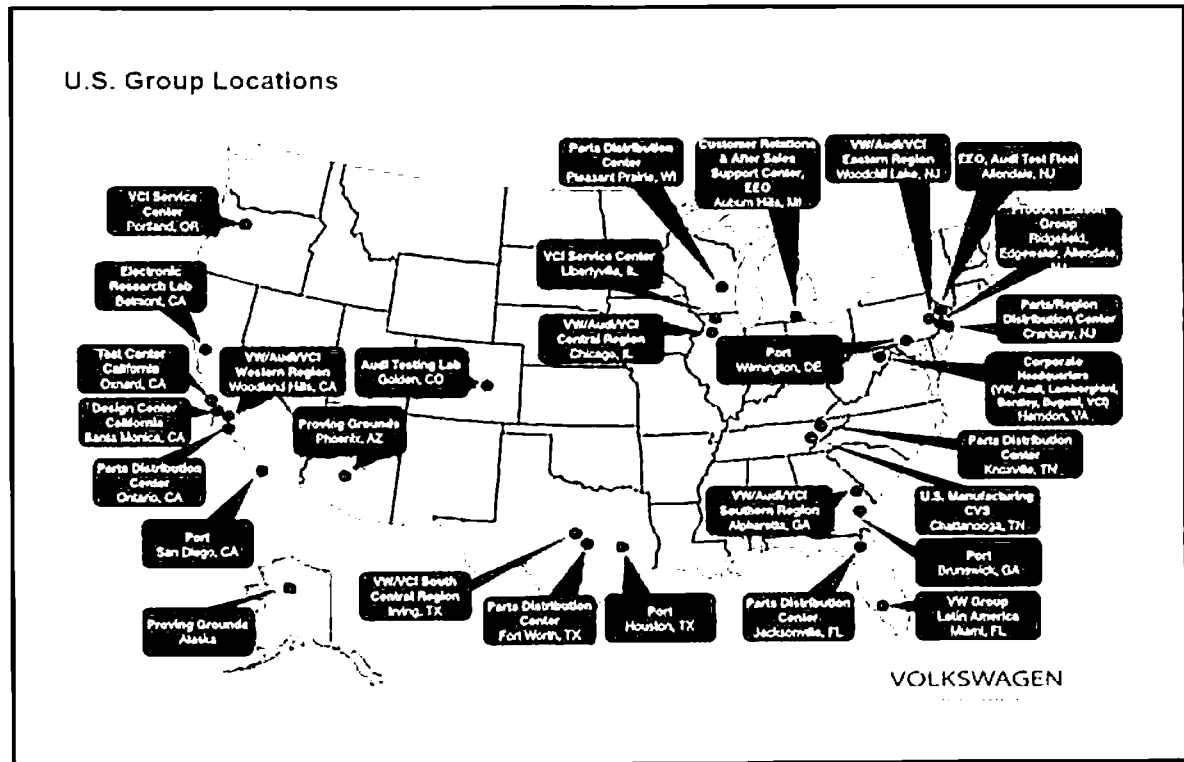
VOLKSWAGEN
GROUP OF AMERICA



VW CREDIT, INC.

15. Founded in 1955, Defendant Volkswagen Group of America, Inc. (hereinafter, “VWoA”) is a wholly owned subsidiary of Volkswagen AG. VWoA is a corporation organized and in existence under the laws of the State of New Jersey and registered with the Secretary of State to conduct business in California. VWoA is one of the world’s largest producers of

passenger cars. VWoA sells the Beetle, Beetle Convertible, CC, Eos, e-Golf, Golf, Golf GTI, Golf R, Golf SportWagen, Jetta, Passat, Tiguan, and Touareg vehicles through approximately 652 independent U.S. dealers. VWoA's operations in the United States include research and development; parts and vehicle processing; parts distribution centers; sales, marketing and service offices; financial service centers; and its state-of-the-art manufacturing facility in Chattanooga, Tennessee (the Volkswagen Chattanooga Assembly Plant, which opened in 2011 and currently has over 3,200 Volkswagen employees and over 9,500 indirect supplier employees).



Source: <http://www.volkswagengroupamerica.com/locations.html>.

16. Volkswagen also operates an Electronics Research Laboratory in **Belmont, California**. The Volkswagen **Electronic Research Laboratory** is located at 500 Clipper Drive, Belmont, CA, 94002. The Electronic Research Laboratory is part of the global research and development network that supports Volkswagens' brands including, Audi, Bentley, Bugatti, Lamborghini and VW. The Electronic Research Laboratory is a subsidiary of VWoA, with the parent company being Volkswagen AG. *The Electronic Research Laboratory was touted as*

Volkswagen's largest research facility outside of Germany, and takes advantage of its proximity to Silicon Valley to cultivate numerous partnerships to enhance the knowledge of Volkswagen.



17. During the relevant time, each Defendant acted as an agent, servant, employee, and/or joint venture of the other Defendants and in doing the things alleged acted within the course of such agency, employment, and/or in furtherance of the joint venture to accomplish the scheme. Each of the Defendant's acts alleged herein was done with the permission and consent of each of the other Defendants. While each of the Defendants are separate legal entities, each Defendant works together under a common identity as portrayed to the public and there is sufficient unity of interest and control between each Defendant such that the acts of one are for the benefit and can be imputed to the acts of the other.

18. During the relevant time, Volkswagen was engaged in the business of designing, manufacturing, constructing, assembling, marketing, advertising, promoting, distributing, and/or selling automobiles and other motor vehicles and motor vehicle components throughout the United States.

III. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d). The matter in controversy exceeds \$5,000,000 exclusive of interest and costs, and this matter is a class

1 action in which certain Class Members are citizens of states other than each Defendant's state of
 2 citizenship. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff and
 3 the Class have brought a claim pursuant to 15 U.S.C. § 2301 et seq. This Court also has
 4 supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

5 20. This Court has personal jurisdiction over Plaintiff because Plaintiff resides in the
 6 County of San Mateo, California, and submits to the Court's jurisdiction. This Court has personal
 7 jurisdiction over Volkswagen because Volkswagen has conducted and continues to conduct
 8 substantial business in California and has sufficient minimum contacts with California in that: (1)
 9 Volkswagen's Electronics Research Laboratory is located in *Belmont, California*; (2) its Test
 10 Center is located in *Oxnard, California*; (3) its Design Center is located in *Santa Monica,*
 11 *California*; (4) its Pacific Region Office is located in *Westlake Village, California*; and (5) one of
 12 its Parts Distribution Centers is located in *Ontario, California*.

13 21. Venue is proper in this Court under 28 U.S.C. § 1391 because Volkswagen sells a
 14 substantial amount of automobiles in this District, has dealerships in this District, maintains and
 15 operates a Test Center, Design Center, Western Regional Headquarters, and Parts Distribution
 16 Center within this District, and many of Volkswagen's acts complained of herein occurred within
 17 this District. Furthermore, a substantial part of the events alleged in this Complaint giving rise to
 18 Plaintiff's claims, including the false and misleading advertising alleged herein, occurred in,
 19 emanated from and/or were directed from this District. Venue is also proper in this Court because
 20 Volkswagen caused harm to Class Members residing in this District.

21 **IV. FACTUAL ALLEGATIONS**

22 **A. Federal and State Regulations Regarding Vehicle Emissions**

23 22. In 1970, Congress enacted the first major Clean Air Act, which has been amended.
 24 The Clean Air Act required a 90% reduction in emissions from new automobiles by 1975. In
 25 1970, Congress also established the Environmental Protection Agency ("EPA"), which has broad
 26 responsibility for regulating motor vehicle pollution.
 27
 28

23. Congress' purpose in creating the Clean Air Act, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution." 42 U.S.C. § 7401(b)(1)-(2).

24. The Clean Air Act requires vehicle manufacturers to certify to the EPA that their products will meet applicable federal emission standards to control air pollution. The EPA administers a certification program to ensure that every vehicle introduced into United States commerce satisfies applicable emission standards. Under this program, the EPA issues certificates of conformity and approves the introduction of vehicles satisfying the standards into United States commerce. **Every vehicle sold in the United States must be covered by an EPA-issued certificate of conformity.**⁸ This includes light-duty motor vehicles such as the Class Vehicles at issue in this Complaint; the Class Vehicles needed to satisfy emission standards for certain air pollutants, including NOx. 40 C.F.R. § 86.1811-04. Clean Air Act § 101(b)(1) - (2), 42 U.S.C. § 7401(b)(1)-(2).

25. California, through the California Air Resources Board ("CARB") also regulates emissions standards for vehicles. California's Low Emission Vehicle Regulations have emission reduction standards for automobiles.

B. By the Early 1990s, Japanese Automakers Had Overtaken Volkswagen in Car Sales and Volkswagen Looked for Ways to Increase Sales and Used a Santa Clara County, California Laboratory for Research.

26. In 1949, Volkswagen introduced in the United States the "VW Bug" and since then more than 5.5 million of this iconic car have been sold in this country.⁹ For many years, Volkswagen was the top selling foreign car in the United States, but by the early 1990s, Japanese imports had completely overtaken Volkswagen and other European imports. Since then, Volkswagen has tried, mostly without success, to increase its sales in the United States. By the

⁸ *Id.*

⁹ <https://media.vw.com/release/672/>

1 mid-2000s, Volkswagen sought to diversify its car lineup, including designing vehicles for the
2 United States' market.¹⁰

3 27. Volkswagen increased its research and development budget, spending over \$10
4 billion in 2010. Volkswagen greatly relied on its Electronics Research Laboratory. Volkswagen
5 opened the Electronics Research Laboratory in Sunnyvale, California in 1998 with three
6 employees. In 2002, the laboratory moved to Palo Alto. In July of 2010, Volkswagen's CEO
7 Martin Winterkorn visited the Palo Alto laboratory and announced: "We want to take
8 Volkswagen to the top of the industry by 2018."

9 28. ¶ ¶ § of 2011, Volkswagen moved the Electronics Research Laboratory to a
10 157,000 square foot office building in Belmont. "The Electronics Research Laboratory
11 represents the entire Volkswagen Group in applied research and development."¹¹ "The
12 Electronics Research Laboratory is another example of Volkswagen Group of America's
13 investment in the U.S., [Volkswagen Group of America President and CEO Jonathan] Browning
14 said, adding that Volkswagen Group has made a significant multi-million dollar investment in
15 the new facility. 'The commitment of the [Electronics Research Laboratory] teams to
16 automotive innovation will benefit drivers through safer, more eco-friendly driving experiences,
17 prompted by the technological heartbeat of Silicon Valley. I am excited to help showcase the
18 next generation of mobility today.'¹²

19 29. The research and innovation by Volkswagen through the Electronics Research
20 Laboratory and other laboratories was but one part of Volkswagen's plan. Indeed, as revealed
21 by Volkswagen's EU Group's promotional brochures touting its Global Research activities, their
22 Electronic Research Lab in Belmont appears to have been a focal point of the scheme to defraud
23 the public. (See Exhibit 2) In addition, as part of its business plan to increase sales and market
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25 _____
26 ¹⁰ <http://www.cheatsheet.com/automobiles/volkswagens-big-north-american-problem.html/?a=viewall>

27 ¹¹ *PR News Wire*, "Researchers Showcase Latest Automotive Innovation for the Next Generation of Mobility, April
28 29, 2011.

¹² *Id.*

1 share, Volkswagen increased its emphasis on diesel cars and engaged in an extensive marketing
2 campaign to sell more cars in the United States.

3 30. One focus of Volkswagen's plan was to increase sales of its diesel vehicles.
4 Volkswagen knew that consumers wanted environmentally friendly cars while still having fuel
5 efficiency and powerful cars. Volkswagen implemented a plan to increase sales of its diesel cars.

6
7 **C. Volkswagen Extensively Marketed Its Diesel Cars as Having Less Greenhouse
8 Gas Emissions than Other Cars While Having Greater Fuel Efficiency and
9 Performance.**

10 31. Advertising has been a key part of Volkswagen's business plan. For the period of
11 2011-2013, Volkswagen spent over \$2.9 billion per year world-wide on advertising.¹³

12 32. As explained by Volkswagen's marketing chief, Tim Ellis in *USA Today*, even
13 though 2008 was a tough ad year for Volkswagen, its ad expenditures would be the same in
14 2009.¹⁴

15 33. In 2009, Volkswagen introduced a campaign called 'Meet the Volkswagens.'
16 "Five ads running over eight weeks will promote fuel efficiency, green credentials, cost of
17 ownership and safety by highlighting VW's performance compared with rival brands."¹⁵ "Part
18 of the big plan is for Volkswagen to grow the brand in the U.S.," says Ellis. "As part of that
19 strategy, we can no longer afford to be a small, quirky niche brand here."¹⁶ The marketing
20 included Volkswagen using Facebook with a link to a blog, tdi.vw.com/tdi to raise awareness of
21 its "clean" diesel models.

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26 ¹³ <http://www.statista.com/statistics/286537/volkswagen-advertising-spending-worldwide/>

27 ¹⁴ <http://abcnews.go.com/Business/story?id=7493781>

28 ¹⁵ *Id.*

¹⁶ *Id.*

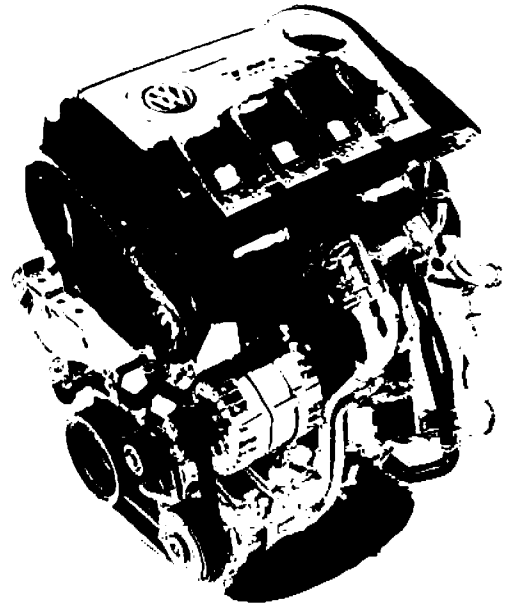
34. Part of its campaign was the slogan that “Today’s diesel-powered automobiles aren’t your father’s diesel-powered automobiles.” “VW had a simple message in each instances: its autos are fuel-efficient, green and safe vehicles that won’t break the bank.”¹⁷

This ain’t your daddy’s diesel.

Stinky, smoky, and sluggish. Those old diesel realities no longer apply. Enter TDI Clean Diesel. Ultra-low-sulfur fuel, direct injection technology, and extreme efficiency. We’ve ushered in a new era of diesel.

- Engineered to burn low-sulfur diesel fuel
- “Common Rail” direct injection system

[View key fuel efficiency info](#)



Source: <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>.

35. “*This ain’t your daddy’s diesel*,” boldly declared Volkswagen, an international automotive conglomerate, in its sleek advertising campaign on their main webpage.¹⁸

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¹⁷ <http://www.edmunds.com/autoobserver-archive/2009/05/volkswagen-playing-truth-or-dare-to-market-its-diesel-vehicles.html>

¹⁸ See <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>. Last accessed September 22, 2015.

36. Another example of Volkswagen's advertising touting its diesel cars

Efficiency. Now available without compromise.

Hybrids aren't the only game in town. TDI® Clean Diesel engines offer up impressive efficiency numbers too. Take the Passat TDI for starters. It can go up to 814 miles uninterrupted. Now that's a game changer.

- Seven efficient models to choose from
- Efficiency from up to 29 to 46 hwy mpg
- Ranges from up to 594 to 814 hwy miles on a single tank of fuel

[View key fuel efficiency and range info.](#)



This advertisement has since been removed from Defendant's webpage. Source: <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>.

37. The Class Vehicles, as VWoA's Mark Barnes once boasted were "fantastic power train[s]" that give[] very good fuel economy." Yet "[i]t's also good for the environment because it puts out 25% less greenhouse gas emission than what a gasoline engine would. *And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%. So a very very clean running engine. Clean enough to be certified in all 50 states.*"¹⁹

38. From television to print advertisements to interviews to social media, Volkswagen represented the environmental-friendliness, fuel efficiencies of the Class Vehicles to the public.

39. The advertising and promotion paid off as auto critics started praising Volkswagen's diesel cars and sales increased.

¹⁹ See Business Insider's "Volkswagen: Our Diesel Cars Whup the Prius and Other Hybrids," by Gayathri Vaidyanathan, October 9, 2009, <http://www.businessinsider.com/volkswagen-preps-for-a-diesel-revolution-2009-10>.

1 40. In 2008, Jeep, Mercedes-Benz and Volkswagen were the only manufacturers
2 selling diesels in light-duty vehicles in the United States.²⁰ Edmunds, a highly regarded vehicle
3 analyst, however, did not recommend any Volkswagen diesel cars as its top recommended.
4 Instead, it recommended: “If you want more options, we’d advise waiting until 2009 when the
5 ever popular Volkswagen Jetta TDI is slated to return to the U.S. as a 50-state vehicle.”²¹

6 41. Those recommendations began changing in 2009. In 2009, Edmunds made one of
7 its top recommended the 2009 Jetta, stating: “Though the majority of diesel engines are sold in
8 heavy-duty vehicles, the most anticipated of the new clean diesels coming out this year are a
9 sedan (and a wagon): the 2009 Volkswagen Jetta TDI. If you’re shopping for a compact sedan or
10 wagon, it’s the only diesel game in town. Starting at just a shade under \$22,000 for the sedan and
11 \$23,600 for the base Sportwagen, the new clean Jetta TDI brings with it the German premium
12 sedan feel without the premium sedan price. The Jetta TDI also qualifies for a \$1,300 alternative
13 motor vehicle federal tax credit, which can help offset the small premium you pay for diesel
14 efficiency.”²²

15 42. In 2010, Edmunds recommended the Jetta as one of its top recommended diesels
16 and stated: “The Volkswagen Jetta TDI, for example, enters its second year on the market as one
17 of the most sought-after Jetta models, accounting for more than a third of stateside Jetta sales.
18 Starting at about \$23,000 for the sedan and \$25,000 for the SportWagen, the Jetta TDI provides
19 sprightly performance and a premium feel, along with the kind of fuel economy that only
20 gasoline-electric hybrids can match. It’s a bit pricey, but its unique collection of virtues makes it
21 an Edmunds staff favorite — and an interesting alternative to green machines like the Ford
22 Escape Hybrid and Toyota Prius.”²³

23 ///

24
25 ²⁰ <http://www.edmunds.com/diesel/2008/buying-guide.html>

26 ²¹ *Id.*

27 ²² <http://www.edmunds.com/diesel/2009/buying-guide.html>

28 ²³ <http://www.edmunds.com/diesel/2010/buying-guide.html>

1 43. In 2011, Edmunds recommended the Golf as one of its top recommended diesels
2 and stated: "Our favorite is the Volkswagen Golf TDI, which exploits the traditional fuel-
3 efficiency of its turbocharged four-cylinder diesel engine for truly frugal motoring when it comes
4 to fuel cost per mile."²⁴

5 44. In 2012 Edmunds included the Golf as one of its top recommended diesels and
6 stated: "Our favorite is the Volkswagen Golf TDI, which we feel offers a well-rounded package.
7 It has the premium interior of a more upscale vehicle, is easy to load cargo in thanks to its
8 hatchback, has a sporty suspension and is still capable of up to 42 mpg on the highway. The
H 10 Volkswagen Jetta TDI offers the same engine/transmission combination, but the car's complete
10 redesign for 2011 left us wholly unimpressed. If you are looking for a larger sedan, consider the
11 more refined Volkswagen Passat TDI instead."²⁵

12 45. In 2013, Edmunds recommended both the Golf and the Passat as top
13 recommended diesels: "While the Volkswagen Golf TDI is one of the best-selling cars in
14 Europe, it hasn't yet taken U.S. buyers by storm. Part of the reason is its price, since the TDI is
15 the top trim for the Golf. Still, we feel that the car is worth it because it offers a well-rounded
16 package that few cars in its class can match. The Golf has the premium interior of a more
17 upscale vehicle, is easy to load cargo in thanks to its hatchback, has a sporty suspension and is
18 still capable of up to 42 mpg on the highway. [¶] The Volkswagen Passat TDI offers the same
19 engine/transmission combination as the Golf TDI, but in a roomier midsize sedan body. The
20 Passat earned top honors in our last 40 MPG Challenge, when it surpassed its own EPA numbers
21 in real-world driving conditions. It is an excellent alternative to the Toyota Camry Hybrid or the
22 Ford Fusion Hybrid."²⁶

23 46. In the first half of 2015, Volkswagen passed Toyota as the world's largest
24 automaker. Volkswagen AG sold 5.4 million vehicles, including 295,000 in the United States, to
25

26 ²⁴ <http://www.edmunds.com/diesel/2011/buying-guide.html>

27 ²⁵ <http://www.edmunds.com/diesel/2012/buying-guide.html>

28 ²⁶ <http://www.edmunds.com/diesel/2013/buying-guide.html>

1 Toyota's 5.02 million vehicles.²⁷ Volkswagen's projection of being the largest automaker in
2 the world by 2018 appeared to be coming true, meeting the goal three years early.

3
4 **D. The Truth Is Revealed: Volkswagen Admits to a Scheme to Knowingly and**
5 **Intentionally Manipulating Class Vehicle's Emission Systems and the Class**
6 **Vehicles Were Actually Emitting Up to 40 Times the Legal Limit**

7 47. In fact, the Class Vehicles were not environmentally friendly with fuel efficiency
8 and power, but Volkswagen had knowingly and intentionally manipulated the Class Vehicle's
9 emission system. The true facts were that the vehicles were actually emitting up to 40 times the
10 legal limit. Volkswagen had hidden its scheme for over six (6) years, but it was finally revealed
11 to the public in September of 2015.

12 48. CARB and the EPA were first alerted to emissions problems with the Class
13 Vehicles in May 2014 when the West Virginia University's (hereinafter, "WVU") Center for
14 Alternative Fuels, Engines & Emissions published results of a study that found significantly
15 higher in-use emissions from two of Volkswagen's light-duty diesel vehicles.

16 49. Over the course of the year, Volkswagen continued to assert to both the CARB and
17 the EPA that the increased emission from these vehicles could be attributed to various technical
18 issues and unexpected in-use conditions. Volkswagen issued a voluntary recall in December
19 2014 to address the issue. CARB, in coordination with the EPA, conducted follow up testing of
20 these vehicles both in the laboratory and during normal road operation to confirm the efficacy of
21 the recall. When the testing showed only a limited benefit to the recall, the CARB broadened the
22 tested vehicles to pinpoint the exact technical nature of the vehicles' poor performance and to
23 investigate why the vehicles' onboard diagnostic system was not detecting the increased
24 emissions.²⁸

25 50. None of the potential technical issues suggested by Volkswagen explained the
26 higher test results consistently confirmed during the CARB's testing and it became clear that the

27 ²⁷ <http://www.latimes.com/business/la-fi-hy-vw-toyota-20150728-story.html>

28 ²⁸ See United States Environmental Protection Agency Notice of Violation (Volkswagen):
<http://www3.epa.gov/otaq/cert/violations.htm>.

CARB and the EPA would not approve certificates of conformity for Volkswagen's 2016 model year diesel vehicles until Volkswagen could adequately explain the anomalous emissions and ensure that the 2016 model year vehicles would not have similar issues. Only then did Volkswagen admit it had designed and installed a defeat device in these vehicles in the form of a sophisticated software algorithm that detected when a vehicle was undergoing emission testing.²⁹

E. Volkswagen's Admission to Fraudulently and Intentionally Evading Federal and State Clean Air Emissions Standards.

51. On September 18, 2015, the EPA issued a notice of violation (hereinafter, "NOV") of the Clean Air Act, 42 U.S.C. §§ 7401 – 7671(q), and its implementing regulations to Volkswagen. Exhibit 1. Amongst other allegations, the NOV alleges that four-cylinder Volkswagen diesel cars from model years 2009-2015 contained software "manufactured and installed" by Volkswagen to deliberately circumvent EPA emission standards for certain air pollutants.³⁰ "Therefore, VW violated section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B)."³¹ CARB also issued its own letter regarding Volkswagen's violations. Exhibit 3.

52. Defeat devices bypass, defeat, or render inoperative elements of a vehicles' emission control system that exist to comply with Clean Air Act emission standards. Defeat devices, such as those installed in Volkswagen's Class Vehicles, sense whether the vehicle is being tested for compliance with EPA emission standards based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine's operation, and barometric pressure. These inputs precisely track the parameters of the federal test procedure used for emission testing for EPA certification purposes.

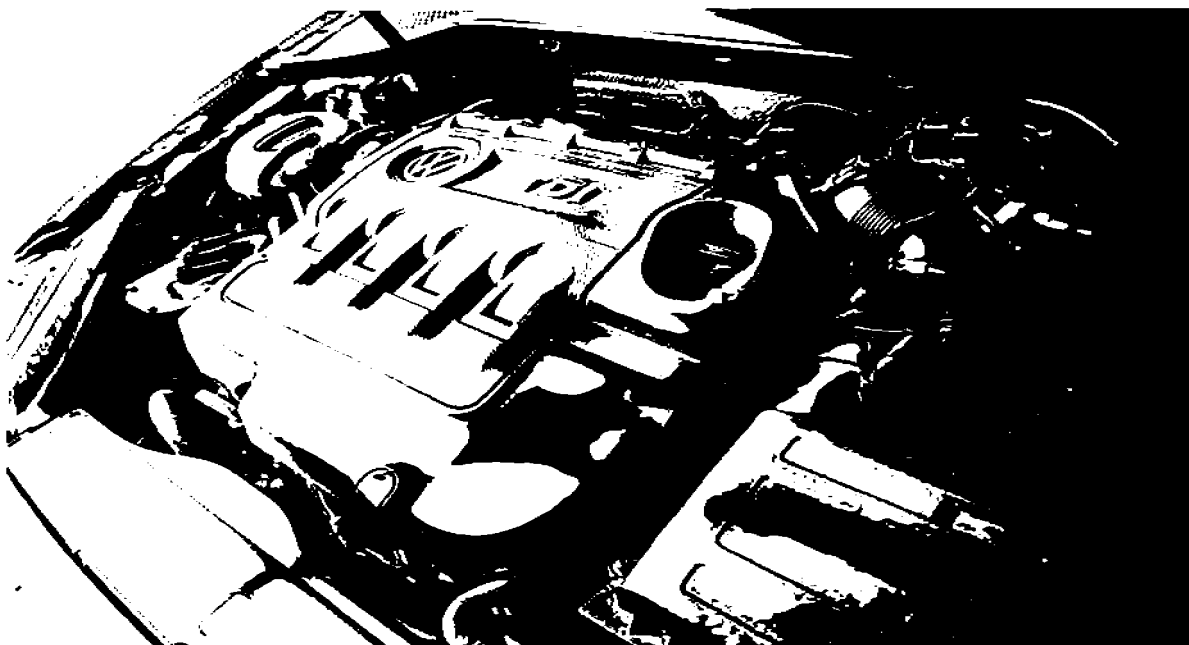
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²⁹ See United States Environmental Protection Agency Notice of Violation (Volkswagen): <http://www3.epa.gov/otaq/cert/violations.htm>.

³⁰ See United States Environmental Protection Agency Notice of Violation (Volkswagen): <http://www3.epa.gov/otaq/cert/violations.htm>.

³¹ See NOV from the United States Environmental Protection Agency, dated September 18, 2015.



An example of Volkswagen's "clean" diesel engine. Source: <http://www.automobilemag.com/features/news/volkswagen-cheating-scandal-expands-to-11-million-diesels-worldwide/>.

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

54. By making and selling vehicles with defeat devices that allowed for higher levels of air emissions than they certified to the EPA, Volkswagen violated the Clean Air Act. *"Using [these] defeat devices in cars to evade clean air standards is illegal and a threat to public health,"* said Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance.³²

³² See United States Environmental Protection Agency News Release: "EPA, California Notify Volkswagen of Clean Air Act Violations," <http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/dfc8e33b5ab162b985257ec40057813b!OpenDocument>. Last accessed September 22, 2015.

1 55. Indeed, *Volkswagen AG's CEO Martin Winterkorn acknowledged as much and*
 2 *admitted to Volkswagen's illegal misconduct* as news of the 7-year-long scandal broke:
 3 "Millions of people all over the world trust our brand, our cars, and our technology. I am deeply
 4 sorry we have broken this trust. I would like to make a formal apology to our customers, to the
 5 authorities, and to the general public for this misconduct." On September 23, 2015, Mr.
 6 Winterkorn resigned as CEO of Volkswagen, stating that "*[a]bove all, I am stunned that*
 7 *misconduct on such a scale was possible in the Volkswagen Group.*"³³

8 56. Michael Horn, the head of VWoA, also admitted that Volkswagen has "totally
 9 screwed up." "Let's be clear about this, our company was dishonest with the [EPA] and the
 10 California air resources board [*sic*], and with all of you."³⁴

11 57. As a result of Volkswagen's admitted scandal, Volkswagen's brand and reputation
 12 have been irreparably damaged, as evidenced by Volkswagen's ever-tanking stock price in the
 13 hours and days following the EPA's NOV. The Administration's forced recall has also damaged
 14 Volkswagen's brand, reputation and re-sale values. Volkswagen recognizes the damage to their
 15 brand and reputation, setting aside \$7.2 billion to pay for their emissions cheating scheme.³⁵
 16 "'The Volkswagen brand is at risk,' Mike Jackson, CEO of Auto Nation, told CNBC today
 17 [September 23, 2015]."³⁶

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 23 ³³ See Fox Business's "Volkswagen CEO Resigns Amid Emissions Scandal" by Matthew Rocco, September 23,
 2015. <http://www.foxbusiness.com/business-leaders/2015/09/23/volkswagen-ceo-resigns-amid-emissions-scandal/>.

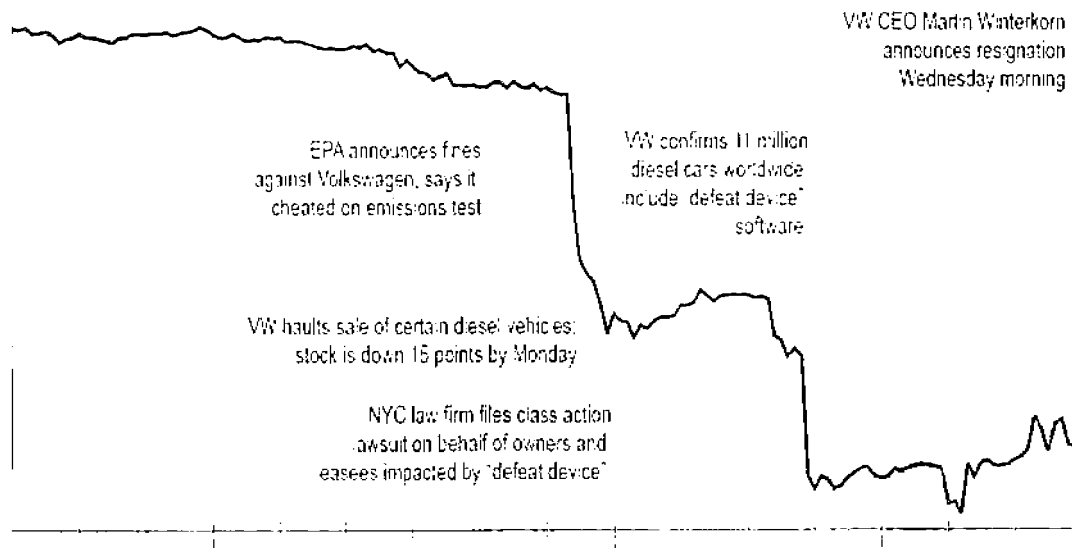
24 ³⁴ See CNN Money's "Volkswagen scandal widens" by Mark Thompson and Ivana Kottasova, September 22, 2015.
 25 <http://money.cnn.com/2015/09/22/news/vw-recall-diesel/>.

26 ³⁵ See Volkswagen Sets Aside \$7.2 Billion to Pay for Emissions Cheating Scandal," by Paul A. Eisenstein, NBC
 27 News, September 22, 2015. [http://www.nbcnews.com/business/autos/volkswagen-sets-aside-7-2-billion-pay-](http://www.nbcnews.com/business/autos/volkswagen-sets-aside-7-2-billion-pay-emissions-cheating-scandal-n431456)
 28 [emissions-cheating-scandal-n431456](http://www.nbcnews.com/business/autos/volkswagen-sets-aside-7-2-billion-pay-emissions-cheating-scandal-n431456).

³⁶ [http://www.timesfreepress.com/news/business/aroundregion/story/2015/sep/23/biggest-vw-dealer-says-](http://www.timesfreepress.com/news/business/aroundregion/story/2015/sep/23/biggest-vw-dealer-says-volkswagen-brand-risk/326700/)
[volkswagen-brand-risk/326700/](http://www.timesfreepress.com/news/business/aroundregion/story/2015/sep/23/biggest-vw-dealer-says-volkswagen-brand-risk/326700/)

58. The following shows how investors reacted to the disclosure of the scheme:

Investors' reaction to Volkswagen emissions saga



Source: <http://fortune.com/2015/09/23/volkswagen-stock-drop/>.

59. Internal investigations revealed that Volkswagen's "misconduct," originally thought by U.S. regulators to involve some 500,000 vehicles, in fact could involve nearly 11 million vehicles worldwide.³⁷ *Over 77,000 of these Class Vehicles were sold in California alone.*

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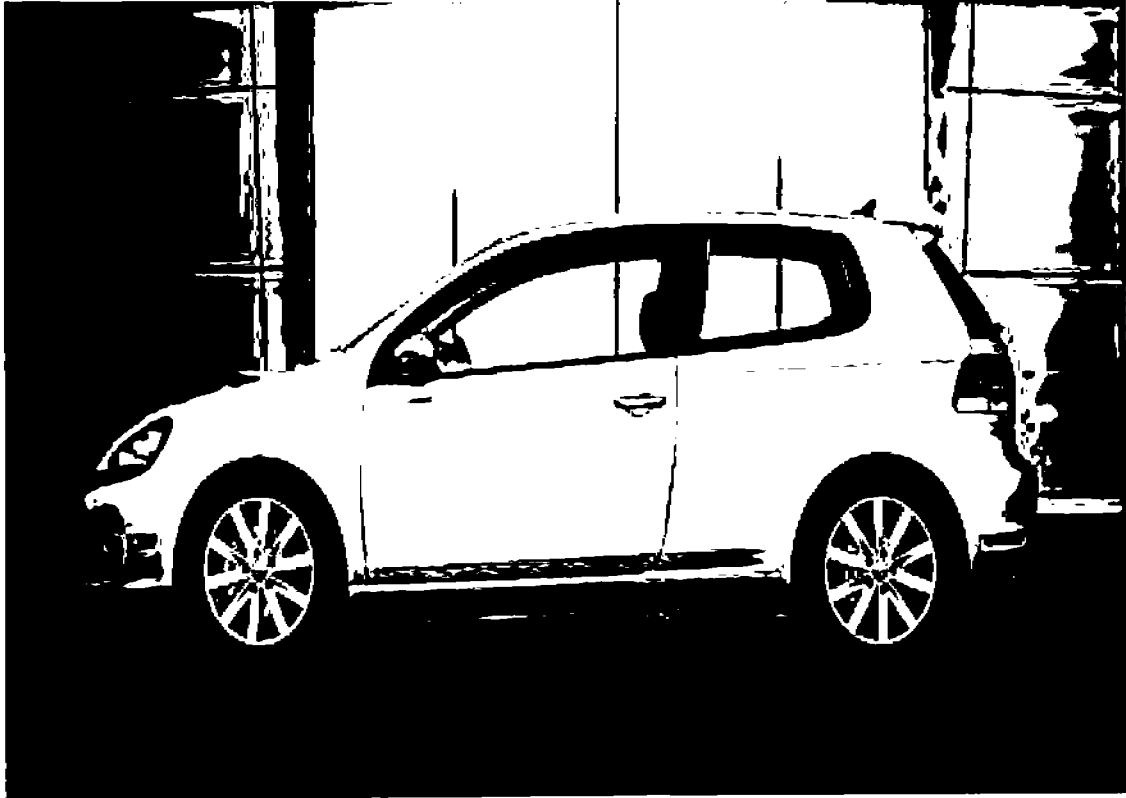
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³⁷ See CNN Money's "Volkswagen scandal widens" by Mark Thompson and Ivana Kottasova, September 22, 2015, <http://money.cnn.com/2015/09/22/news/vw-recall-diesel/>.

F. **Volkswagen's Defeat Devices Were Sophisticated Devices Intentionally Manufactured and Installed In Class Vehicles In Violation of U.S. Law.**



An example of one of the Class Vehicles (2010 Volkswagen Golf TDI) containing a "defeat device," as defined by the Clean Air Act. Source: http://wheels.blogs.nytimes.com/2009/12/30/thrift-and-thrills-with-vw-golf-tdi-and-gti/?_r=0.

60. Volkswagen's Class Vehicles were equipped with a sophisticated software algorithm that was designed to detect when the vehicle was undergoing official emissions testing. Full emissions controls were turned on only during these mandated tests. *During all other times of normal driving, the effectiveness of the Class Vehicles' pollution emissions control devices was manipulated by Volkswagen to be greatly reduced.*³⁸

61. Specifically, during EPA emission testing, the Class Vehicles' electronic control module (hereinafter, "ECM") ran software which produced compliant emission results under an ECM calibration that Volkswagen referred to as the "dyno calibration" (referring to the

³⁸ See United States Environmental Protection Agency News Release: "EPA, California Notify Volkswagen of Clean Air Act Violations," <http://yosemite.epa.gov/opa/admpress.nsf/6424ac1caa800aab85257359003f5337/dfc8e33b5ab162b985257ec40057813b!Open!Document>. Last accessed September 22, 2015.

dynamometer, the equipment used in emissions testing). At all other times during normal vehicle operation, the software was activated and the Class Vehicle's ECM software ran a separate "road calibration" which reduced the effectiveness of the emission control system. As a result, emissions of NOx increased by a factor of 10 to 40 times above the EPA compliant levels, depending on the type of drive cycle.

62. Based on the design of Volkswagen's defeat devices, it is clear that Volkswagen knew that its devices would bypass, defeat, or render inoperative elements of the vehicle related to compliance with the Clean Air Act emission standards because "the software was designed to track the parameters of the federal test procedure and *cause emission control system to underperform when the software determined that the vehicle was not undergoing the federal test procedure.*"³⁹

63. Put simply, Volkswagen's defeat device results in cars that meet emissions standards in the laboratory or testing station, but during everyday operation, the device is programmed in such a manner that emits NOx at up to *40 times the standard permitted* by U.S. health regulations.

G. The Defeat Devices Installed by Volkswagen in the Class Vehicles Emit Pollutants Known to Cause Serious Health Problems.

64. The Clean Air Act and the regulations promulgated thereunder aim to protect human health and the environment by reducing emissions of NOx and other pollutants from mobile sources of air pollution. NOx pollution generates nitrogen dioxide, and contributes to ground-level ozone and fine particulate matter.

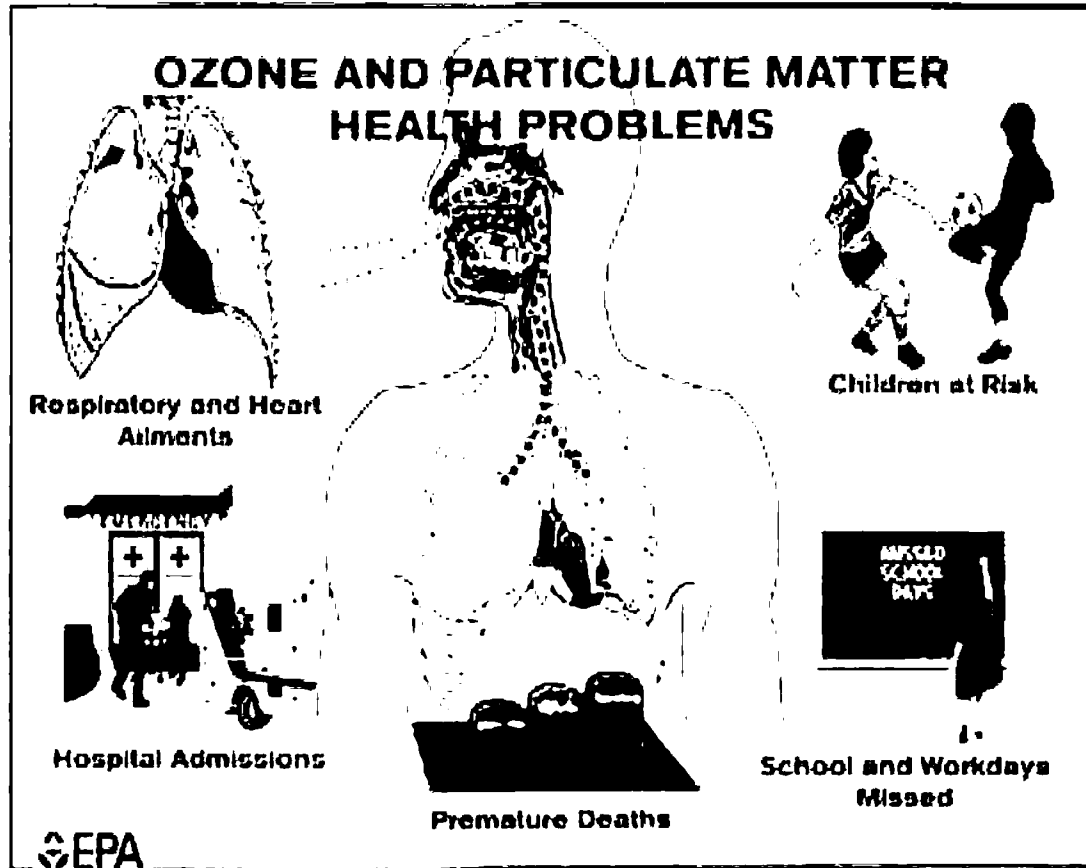
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³⁹ See United States Environmental Protection Agency News Release: "EPA, California Notify Volkswagen of Clean Air Act Violations."



A photo on the American Lung Association website provided by the EPA
 Source: <http://www.cleanairstandards.org/about-this-website/>.

65. Exposure to these pollutants has been associated with a range of serious health effects, including increased asthma attacks and other respiratory illnesses. Exposure to ozone and particulate matter – which causes cancer⁴⁰ – has been linked with an increased risk of heart attacks, strokes, and premature death due to respiratory-related or cardiovascular-related effects. Recent studies have shown that not only can nitrogen dioxides cause or exacerbate a number of health conditions, but exposure to these toxins are correlated with lower birth weight and smaller head circumference in babies.⁴¹ Particularly at risk for health effects of these pollutants are the children, the elderly, and people with pre-existing respiratory disease.⁴²

⁴⁰ See BBC's "Diesel cars: Is it time to switch to a cleaner fuel?" Richard Anderson, BBC News, July 16, 2015, <http://www.bbc.com/news/business-33254803>.

⁴¹ "Review of evidence on health aspects of air pollution – REVIHAAP Project," World Health Organization, Regional Office for Europe, World Health Organization 2013.

H. **By Engaging in this Scheme, Volkswagen Maintained Its Dominance in the Diesel Vehicle Industry At the Detriment of Consumers and the Environment.**

66. Both the United States and California governments have encouraged the use of diesel engines to meet fuel efficiency and greenhouse gas targets. As a result, the largest selling factor for diesel cars is their fuel economy and low carbon emissions as compared to standard gasoline engines. Diesel fuel also contains more energy density than petrol. These characteristics result in anywhere from 20% to 40% better fuel economy, and is also known for giving vehicles more powerful hauling capacity. "Some of the diesel cars can go 600, 700 miles on a single fill-up. That's a very high value for many consumers," says Allen Schaeffer, executive director of the Diesel Technology Forum.

67. However, this appealing combination comes at a price – diesel cars emit far more NOx than standard gasoline engines.⁴³ As Volkswagen has admitted, Class Vehicles contained software designed to falsify emissions test results, spewing out NOx levels up to 40 times higher than what is detected by the emissions tests.

68. Diesel engines also cost consumers substantially more upfront when purchasing the vehicles. Class Members paid a significant premium for their Class Vehicles, purportedly designed to be "[e]fficient. Now available without compromise."⁴⁴ "Feel the fun, torque-y, turbocharged power of a TDI Clean Diesel engine and you'll almost forget it's efficient."⁴⁵ These representations and the others detailed, *supra*, were false.

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http://www.euro.who.int/__data/assets/pdf_file/0004/193108/RI-VIHAAAP-Final-technical-report-final-version.pdf?ua=1

⁴² See United States Environmental Protection Agency News Release: "EPA, California Notify Volkswagen of Clean Air Act Violations."

<http://yosemite.epa.gov/opa/admpress.nsf/6-42-lac1caa800aab8525735900315337d1fc8e33b5ab162b985257ec40057813b!OpenDocument>. Last accessed September 22, 2015.

⁴³ "Volkswagen boss quits over diesel scandal," Andreas Cremer, Reuters Business News, September 23, 2015. <http://www.reuters.com/article/2015/09/23/us-usa-volkswagen-idUSKCN0R10I120150923>.

⁴⁴ See <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/> for Defendant's advertisement describing their "fun-fueled" diesel engines. Defendant's advertisement has since been removed.

⁴⁵ See <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/> for Defendant's advertisement describing their "fun-fueled" diesel engines. Defendant's advertisement has since been removed.

69. Volkswagen's defeat devices also had associated "benefits" (to Volkswagen) other than allowing their Class Vehicles to pass by emissions tests unnoticed: experts in automotive technology explained that disengaging the pollution controls on a diesel-fueled car can yield better performance, including increased torque and acceleration. These features increased the Class Vehicles' selling appeal. "When the pollution controls are functioning on these vehicles, there's a trade-off between performance and emissions," said Drew Kodjak, executive director of the International Council on Clean Transportation, a research group. "This is cutting corners."⁴⁶

70. While hiding from the public that they were intentionally disregarding United States regulations put in place to protect consumers and the environment, Volkswagen dominated the U.S. diesel-car market. Indeed, Volkswagen's sales of diesel vehicles in the United States in 2013 comprised 78% of all light-vehicle diesel deliveries nationwide.⁴⁷

71. According to an analysis of federal incentives, as a result of Volkswagen's scheme, United States taxpayers were also tricked into shelling out \$51 million in green subsidies for "clean" Class Vehicles due to \$1,300 tax credits available to buyers of about 39,500 Jetta and Jetta Sportwagen models sold in 2009.⁴⁸

72. As Oliver Schmidt, manager of VWoA's U.S. environmental office boasted in 2013, Volkswagen first offered a diesel car in the U.S. in 1976 and has dominated the niche ever since. As such, Schmidt continued, "[t]he Volkswagen Groups is a leader in clean-diesel technology."⁴⁹ *What Schmidt neglected to disclose was that Volkswagen's solid dominance in the diesel niche involved stealthily circumventing the United States emissions laws by tampering their vehicles with hidden software programmed to specifically do so.*

⁴⁶ See "VW Is Said to Cheat on Diesel Emissions; U.S. to Order Big Recall," Coral Davenport and Jack Ewing, The New York Times, September 18, 2015.

⁴⁷ See 2013 CAR Management Briefing Seminars, "VW Details New Diesel Engine for 2014" by Drew Winter, August 6, 2013. <http://wardsauto.com/vehicles-amp-technology/vw-details-new-diesel-engine-2014>.

⁴⁸ "U.S. taxpayers duped into shelling out \$51 million in green subsidies for 'clean' VW vehicles" by Jerry Hirsch, Los Angeles Times, September 21, 2015.

⁴⁹ See 2013 CAR Management Briefing Seminars, "VW Details New Diesel Engine for 2014" by Drew Winter, August 6, 2013. <http://wardsauto.com/vehicles-amp-technology/vw-details-new-diesel-engine-2014>.

I. Volkswagen Dominated the Diesel Vehicle Industry At the Cost of Well-Meaning Consumers Who Paid A Substantial Premium Price for Class Vehicles That Were Not In Fact “Clean.”

73. To perpetuate their fraudulent scheme of overcoming consumer perceptions of “dirty” diesel vehicles, Volkswagen charged a substantial premium on their “clean” diesel vehicles – which Volkswagen ironically marketed under the term “Clean Diesel.”

74. Volkswagen proclaimed that “[l]ong range without sacrifice is the promise of TDI Clean Diesel. And Volkswagen has sold more diesel cars in the U.S. than every other brand combined. Promise kept.” This promise was not kept, and millions of conscientious consumers worldwide were reasonably duped into believing Volkswagen’s “Clean Diesel” ploy – and paid thousands of dollars more for the diesel “benefits” that Volkswagen knew did not in fact exist.

75. As seen by the three charts below, Volkswagen charged a significant premium on all Class Vehicles in which Volkswagen installed its “defeat device.” **Table 1** lists the prices of standard, non-clean diesel vehicle models. **Table 2** lists the prices of Clean Diesel models; a substantial price increase can be compared between Table 2 and Table 1. **Table 3** calculates and compares the difference – the unsubstantiated premium consumers paid as a result of Volkswagen’s unfair, deceptive, and fraudulent business practices.

TABLE 1: Prices of Standard Non-Clean Diesel Models*

<i>Model</i>	<i>Base Price</i>	<i>Mid-Level Price</i>	<i>Top-Line Price</i>
VW Jetta	\$18,780	\$19,775	\$20,095
VW Jetta SportWagen	\$21,265	\$27,025	\$29,385
VW Beetle	\$20,695	\$23,605	\$25,885
VW Golf (2-Door)	\$18,495	N/A	\$19,575
VW Golf (4-Door)	\$20,175	\$22,625	\$25,225
VW Passat	\$21,340	\$24,375	\$23,995
Audi A3**	\$30,900	\$33,600	\$39,750

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TABLE 2: Prices of Clean Diesel Models*

Model	Base Price	Mid-Level Price	Top-Line Price
VW Jetta	\$21,640	\$24,075	\$26,410
VW Jetta SportWagen	\$24,575	\$28,025	\$30,385
VW Beetle	\$25,330	N/A	\$28,525
VW Golf (2-Door)	\$21,975	N/A	N/A
VW Golf (4-Door)	\$22,575	\$26,225	\$28,425
VW Passat	\$27,095	\$29,125	\$30,850
Audi A3**	\$33,200	\$35,900	\$42,050

TABLE 3: Clean Diesel Price Premiums*

Model	Base PREMIUM	Mid-Level PREMIUM	Top-Line PREMIUM
VW Jetta	\$2,860	\$4,300	\$6,315
VW Jetta SportWagen	\$3,310	\$1,000	\$1,000
VW Beetle	\$4,635	N/A	\$2,640
VW Golf (2-Door)	\$3,480	N/A	N/A
VW Golf (4-Door)	\$2,400	\$3,600	\$3,200
VW Passat	\$5,755	\$4,750	\$6,855
Audi A3**	\$2,300	\$2,300	\$2,300

*All VW pricing gathered from "Wayback Machine" and is dated September 17, 2015. All TDI models have since been removed from Volkswagen's current website.

**Audi pricing taken from Volkswagen's current website.

76. "Because by building efficient vehicles that people actually want to drive, we're also building a better future for all of us," stated Volkswagen proudly on its main webpage just a few days ago – which has since disappeared.⁵⁰ *As it turns out, the only future Volkswagen was building was a future for themselves – at the cost of and to the detriment of nearly 11 million conscientious consumers worldwide.*

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⁵⁰ See <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>.

Efficiency isn't just a word. It's our philosophy.

Our commitment to making vehicles that are eco-conscious is part of bigger thinking. Because by building efficient vehicles that people actually want to drive, we're also building a better future for all of us. It's how we Think Blue®.

View new fuel efficiency info.

Volkswagen's fraudulent advertisement, now since removed from their webpage. Source: <https://web.archive.org/web/20150816221300/http://www.vw.com/features/clean-diesel/>.

V. PLAINTIFF AND THE CLASS WERE HARMED BY VOLKSWAGEN'S ACTIONS

77. As a result of Volkswagen's actions, Plaintiff and the Class have been harmed. Plaintiff and Class Members would never have purchased the Class Vehicles, and/or would have paid substantially less for their vehicles. The Class Vehicles have lost value because of Defendants' actions and are not worth as much in a trade or sale as if the vehicle had been as warranted. There is this actual harm and also the harm to the brand, all which decreases the value of the Class Vehicles.

78. It is likely that the Class Vehicles will be recalled and Plaintiff and the Class will lose the use of their vehicles. Further, after the Class Vehicles are remediated, the vehicles will have reduced fuel economy and reduced acceleration during real world use in order that the vehicles can comply with federal emission standards. Accordingly, Plaintiff and Class Members have sustained incidental and consequential damages as herein alleged.

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1 **VI. CLASS ACTION ALLEGATIONS**

2 79. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
3 Procedure 23 on behalf of himself and all others similarly situated. Plaintiff seeks to represent a
4 Class (herein, the "Class") initially defined as:

5 All current and former owners of Class Vehicles who reside in the
6 State of California and/or who purchased or leased Class Vehicles
7 in California. Expressly excluded from the Class are Defendants
8 and their subsidiaries, affiliates, officers, directors, and employees.

9 80. Certification of the Class is appropriate pursuant to Fed. R. Civ. P. 23(a), 23(b),
10 23(b)(2), or 23(b)(3). The proposed Class is composed of tens of thousands of persons dispersed
11 throughout California and joinder is impracticable. The precise number and identity of Class
12 Members are unknown to Plaintiff at this time, but can be obtained from Volkswagen's internal
13 records.

14 81. There are questions of law and fact common to the members of the Class, which
15 predominate over questions affecting only individual Class Members, *inter alia*:

- 16 • Whether Volkswagen misrepresented the environmental friendliness,
17 emission standards compliance and credentials, fuel efficiency and/or performance of the
18 Class Vehicles;
- 19 • Whether Volkswagen misrepresented the emissions levels, fuel efficiency
20 and/or performance that the Class Vehicles could achieve under normal driving
21 conditions;
- 22 • Whether Volkswagen publicized and advertised the environmental
23 friendliness, fuel emission compliance, fuel efficiency and/or performance of the Class
24 Vehicles;
- 25 • Whether Volkswagen's publicity and advertising regarding the
26 environmental friendliness, fuel emission compliance, fuel efficiency and/or performance
27 of the Class Vehicles was misleading;
- 28

- Whether Volkswagen has engaged in unlawful, unfair or fraudulent business practices;
- Whether Volkswagen's misrepresentations and omissions regarding the compliance with emissions levels, environmental friendliness, fuel efficiency and/or performance of the Class Vehicles has deceived or is likely to have deceived Plaintiff and the Class;
- Whether Volkswagen's conduct violated the Magnuson-Moss Warranty Act;
- Whether Volkswagen's conduct violated the California Consumer Legal Remedies Act;
- Whether Volkswagen's conduct violated California Business and Professions Code § 17200, *et seq.*;
- Whether Volkswagen's conduct violated California False Advertising Law (Business and Professions Code § 17500, *et seq.*);
- Whether Volkswagen breach express and/or implied warranties;
- Whether Volkswagen's unlawful, unfair or deceptive practices have harmed Plaintiff and the Class Members;
- Whether Plaintiff and the Class Members are entitled to equitable or injunctive relief and,
- Whether Plaintiff and the Class Members are entitled to damages, including punitive damages.

82. Plaintiff is a member of the Class and Plaintiff's claims are typical of the claims of the Class.

83. Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity. Plaintiff will fairly and adequately protect the interests of the Class and have no interests adverse to or which conflict with the interests of the other members of the Class.

///

1 94. Plaintiff and the Class received written warranties as defined in 15 U.S.C.
2 §2301(6)(A) and/or (B), which Defendants have breached.

3 95. Plaintiff and the Class are “consumers” as defined in 15 U.S.C. § 2301(3). They
4 are consumers because they bought a Class Vehicle, they are entitled under California law to
5 enforce both written and implied warranties.

6 96. Pursuant to 15 U.S.C. § 2310(e), Plaintiff and the Class are not required to provide
7 Defendants notice of this class action and an opportunity to cure until the time the Court
8 determines the representative capacity of Plaintiff pursuant to F.R.Civ.P. 23.

9 97. Defendants, and each of them, are liable to Plaintiff and the Class pursuant to 15
10 U.S.C. § 2310(d)(1) because they breached their written warranties.

11 98. Further, in connection with the sale of the Class Vehicles, Defendants gave an
12 implied warranty under the Act. As part of that implied warranty, Defendants warranted that the
13 Class Vehicle complied with all applicable federal and state regulations, including emission
14 regulations. Defendants breached the implied warranty of merchantability.

15 99. Plaintiff and the Class are entitled to damages caused by Defendants’ breaches of
16 the warranties, including economic damages based upon either a return of Class Members
17 purchase price; and/or the difference between the price paid for the Class Vehicle as warranted
18 and the actual value of the Class Vehicle as delivered, and consequential damages.

19 100. In addition, Plaintiff and the Class are entitled to reasonable attorneys’ fees and
20 costs as determined by the Court.

21 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

22 **SECOND CLAIM**

23 **Violations of the Consumers Legal Remedies Act,**

24 **California Civil Code § 1750, *et seq.***

25 **(On Behalf of Plaintiff and the Class)**

26 101. Plaintiff incorporates by reference each of the paragraphs set forth above as though
27 fully set forth hereinafter.

28 ///

1 102. This cause of action is brought pursuant to the California Consumers Legal
2 Remedies Act ("CLRA"), Civil Code section 1750, *et seq.* Plaintiff brings this action on his own
3 behalf and on behalf of the Class Members, all of whom are similarly situated consumers within
4 the meaning of Civil Code section 1781.

5 103. The acts and practices described in this Complaint were intended to result in the
6 sale of goods, specifically a motor vehicle, in consumer transactions. Defendants, and each of
7 them, violated, and continue to violate, the CLRA, Civil Code section 1770, subdivisions (a)(9),
8 (a)(7), (a)(16), and (a)(5) by:

9 • Representing to consumers purchasing the Class Vehicles that these vehicles'
10 emissions, fuel efficiency and high performance are as advertised and publicized.

11 • Representing in their advertising emissions, environmental, fuel efficiency and
12 performance characteristics for the Class Vehicles that are false.

13 104. Plaintiff and the Class Members have suffered harm as a result of these violations.

14 105. Plaintiff has suffered as a result of Defendants' unlawful conduct because she
15 purchased the Class Vehicles believing, based on Defendants' representations, that the vehicles
16 had certain characteristics that made them environmentally friendly, fuel efficient and with high
17 performance, when in fact these vehicles can have these fuel efficient and performance standards
18 because their emissions do not comply with governmental regulations. These misrepresentations
19 also resulted in higher purchase prices for the Class Vehicles and the subsequent revelation
20 concerning the "defeat devices" will result in lower resale value.

21 106. Defendants, and each of them, concealed from Plaintiff and the Class Members
22 accurate information concerning the emissions standards, fuel efficiency and performance of the
23 Class Vehicles.

24 107. Defendants' misrepresentations and omissions described in the preceding
25 paragraphs were intentional, or alternatively, made without the use of reasonable procedures
26 adopted to avoid such errors.

27 108. Defendants, directly or indirectly, have engaged in substantially similar conduct
28 with respect to Plaintiff and to each member of the Class.

109. Unless Defendants are enjoined from engaging in such wrongful actions and conduct in the future, members of the consuming public will be further damaged by Defendants' conduct.

110. Plaintiff and the Class are entitled to equitable relief on behalf of the Class Members in the form of an order, pursuant to Civil Code section 1780, subdivision (a)(2)-(5), prohibiting Defendants from continuing to engage in the above-described violations of the CLRA. Plaintiff and the Class further seek reasonable attorneys' fees under Civil Code section 1780(e).

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

THIRD CLAIM

Violation of California Business and Professions Code § 17200, *et seq.*

Unlawful Business Acts and Practices

(On Behalf of Plaintiff and the Class)

111. Plaintiff incorporates by reference each of the paragraphs set forth above as though fully set forth hereinafter.

112. Business & Professions Code section 17200, *et seq.* prohibits acts of "unfair competition" which is defined by Business & Professions Code section 17200 as including any "any unlawful, unfair or fraudulent business act or practice"

113. Defendants, and each of them, have violated and continue to violate Business & Professions Code section 17200's prohibition against engaging in "unlawful" business acts or practices, by, *inter alia*, the following:

- Violating the CLRA, Civil Code section 1750, *et seq.* (as alleged herein);
- Violating federal environmental laws, including the Clean Air Act; and
- Violating Business & Professions Code section 17500, *et seq.* (as further alleged herein).

114. Defendants, and each of them, also acted fraudulently and unfairly for purposes of section 17200. Defendants' misrepresentations and omissions regarding the Class Vehicles' emissions, environmental standards, fuel efficiency, and performance in their advertising, public

1 statements and marketing were a material factor in inducing Plaintiff to purchase his Class
 2 Vehicle. Plaintiff suffered injury in fact and lost money and/or property as a result of
 3 Defendants' unlawful business acts and practices and Class Members have suffered harm when
 4 each was required to pay a purchase price for their Class Vehicles which they never would have
 5 purchased if the true facts were known; or paid a price in excess of what a Class Member would
 6 have paid if Defendants had accurately disclosed the Class Vehicles' characteristics; and in the
 7 form of decreased resale value of the Vehicles.

8 115. As a result of Defendants' violations of the Business & Professions Code section
 9 17200, *et seq.*, Plaintiff and the Class are entitled to equitable relief in the form of full restitution
 10 for the inflated sale price of the Vehicles.

11 116. Plaintiff and the Class also seek an order enjoining Defendants from continuing
 12 their unlawful business practices and from such future conduct.

13 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

14 **FOURTH CLAIM**

15 **For Violations of the California False Advertising Law,**

16 **Bus. & Prof. Code § 17500, *et seq.***

17 **(On Behalf of Plaintiff and the Class)**

18 117. Plaintiff incorporates by reference each of the paragraphs set forth above as though
 19 fully set forth hereinafter.

20 118. Defendants, and each of them, violated California's False Advertising Law,
 21 Business & Professions Code section 17500, *et seq.* by using false and misleading messages
 22 regarding the environmental friendliness, emissions, fuel efficiency and performance of the Class
 23 Vehicles in television, print, and Internet advertising.

24 119. These representations and/or omissions have deceived and are likely to deceive
 25 Plaintiff, the Class, and consumers across the country in connection with their decision to
 26 purchase Class Vehicles. Defendants' representations and/or omissions were material and were
 27 a substantial and material factor in Plaintiff's decision to purchase his Class Vehicle. Had
 28 Plaintiff known the actual facts, she would not have purchased the Class Vehicles and/or paid

1 more than she would have had Defendants accurately disclosed the Class Vehicles'
2 characteristics.

3 120. Defendants, directly and indirectly, have engaged in substantially similar conduct
4 with respect to Plaintiff and to each member of the Class.

5 121. Plaintiff suffered injury in fact and lost money and/or property as a result of
6 Defendants' false and misleading advertising and Class Members suffered harm when they were
7 required to pay a purchase price in excess of what a Class member would have paid if
8 Defendants had accurately disclosed the Class Vehicles' characteristics and in the form of
9 decreased resale value of the Class Vehicles.

10 122. As a result of Defendants' violations, Plaintiff and the Class are entitled to
11 equitable relief in the form of full restitution of all monies paid for the sales price of the Class
12 Vehicles, diminished value of the Class Vehicles, and/or disgorgement of the profits derived
13 from Defendants' false and misleading advertising.

14 123. Plaintiff also seeks an order enjoining Defendants from such future conduct.

15 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

16 **FIFTH CLAIM**

17 **For Common Law Fraud**

18 **(On Behalf of Plaintiff and the Class)**

19 124. Plaintiff incorporates by reference each of the paragraphs set forth above as though
20 fully set forth hereinafter.

21 125. Defendants, and each of them, misrepresented, omitted and concealed important
22 facts from Plaintiff as alleged in the Complaint, including the following:

- 23 • Representing to consumers purchasing the Class Vehicles that these vehicles'
24 emissions, fuel efficiency and performance are as advertised and publicized.
- 25 • Representing in their advertising emissions and environmental characteristics for the
26 Class Vehicles that are false.

27 126. Plaintiff and the Class Members have suffered harm as a result of these violations.

28 ///

1 127. Defendants' misrepresentations and omissions regarding the Class Vehicles'
2 emissions, environmental standards, fuel efficiency and performance in their advertising, public
3 statements and marketing were a material factor in inducing Plaintiff to purchase his Class
4 Vehicle. Plaintiff suffered injury in fact and lost money and/or property as a result of
5 Defendants' unlawful business acts and practices and Class Members have suffered harm when
6 each was required to pay a purchase price for their Class Vehicle in excess of what a Class
7 Member would have paid if Defendants had accurately disclosed the Class Vehicles'
8 characteristics and in the form of decreased resale value of the Vehicles.

9 128. Defendants, and each of them, concealed from Plaintiff and the Class accurate
10 information concerning the emissions, environmental friendliness, fuel efficiency and
11 performance of the Class Vehicles.

12 129. Defendants, and each of them, either knew that the representations were false when
13 they made them, or they made the representations recklessly and without regard for their truth.

14 130. Defendants, and each of them, had a duty to disclose the true characteristics of the
15 Class Vehicles due to their superior knowledge as well as due to their affirmative
16 misrepresentations regarding the environmental friendliness of the vehicles.

17 131. Defendants, and each of them, intended Plaintiff and the Class to rely on their
18 representations. Defendants, and each of them, intended to induce Plaintiff and the Class to: (a)
19 purchase Class Vehicles; and (b) to purchase Class Vehicles at a higher purchase price than they
20 would have absent Defendants' misrepresentations and concealment.

21 132. Plaintiff and the Class reasonably relied upon Defendants' representations
22 regarding the characteristics of the Class Vehicles. Plaintiff's and the Class' reasonable reliance
23 upon Defendants' representations was a substantial factor in causing the Plaintiff's and the
24 Class' harm.

25 133. As a direct and proximate result of Defendants' fraud, Plaintiff and the Class
26 sustained damages in an amount to be determined at trial.

27 ///

28 ///

SIXTH CLAIM

(On behalf of Plaintiff and the Class)

140. Plaintiff and the Class have suffered injury in fact and have suffered an economic loss by, inter alia: (a) leasing or purchasing a product they never would have leased or purchased; (b) leasing and/or purchasing an inferior product whose nature and characteristics render it of a lesser value than represented, (c) incurring costs for diminished resale value of the

1 Class Vehicles purchased, (d) leasing and/or purchasing a product that poses a danger to the
 2 health and safety of the public, (e) incurring increased costs to repair the Class Vehicles
 3 purchased, and (f) incurring costs for loss of use. Accordingly, the Court must issue an
 4 injunction restraining and enjoining Defendants from sending or transmitting false and
 5 misleading advertising to individuals or entities concerning the purported safety and quality of
 6 the Class Vehicles from Defendants.

7 WHEREFORE, Plaintiff and the Class pray for judgment as set forth below.

8 **SEVENTH CLAIM**

9 **(Breach of Express Warranty)**

10 **(On behalf of Plaintiff and the Class)**

11 141. Plaintiff incorporates by reference each of the paragraphs set forth above as though
 12 fully set forth hereinafter.

13 142. Defendants, and each of them, expressly warranted to persons purchasing the Class
 14 Vehicles that they were what they were represented to be.

15 143. These express warranties induced the community, in general, and Plaintiff and
 16 members of the Class, in particular, to use and purchase Defendants' products. These express
 17 warranties were both directly and indirectly believed and relied upon by Plaintiff and the Class
 18 and induced Plaintiff and the Class to choose the Class Vehicles.

19 144. Defendants, and each of them, breached their aforesaid warranties in that their
 20 products were not fit for the use and purpose expressly warranted by Defendants.

21 145. Plaintiff and the Class have suffered injury in fact and have suffered an economic
 22 loss by, inter alia: (a) leasing or purchasing a product they never would have leased or
 23 purchased; (b) leasing and/or purchasing an inferior product whose nature and characteristics
 24 render it of a lesser value than represented, (c) incurring costs for diminished resale value of the
 25 products purchased, (d) leasing and/or purchasing a product that poses a danger to the health and
 26 safety of not only the purchaser but also the public, (e) incurring increased costs to repair the
 27 products purchased, and (f) incurring costs from loss of use. Accordingly, the Court must issue
 28 an injunction restraining and enjoining Defendants from sending or transmitting false and

misleading advertising to individuals or entities concerning the purported safety and quality of the Class Vehicles from Defendants.

WHEREFORE, Plaintiff and the Class pray for judgment as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, pray for relief as follows:

1. An Order appointing Plaintiff to represent the proposed Class pursuant to Fed. R. Civ. P. 23(a) and designating his counsel as Class Counsel;
2. An Order enjoining Defendants, and each of them, from future violations of the CLRA, 16 C.F.R. section 259.2, Business & Professions Code section 17200, *et seq.*, Business & Professions Code section 17500, *et seq.*, as alleged herein;
3. An Order awarding Plaintiff and the Class restitution and/or disgorgement;
4. An order awarding Plaintiff and the Class compensatory damages;
5. An Order awarding Plaintiff and the Class punitive damages;
6. An Order awarding Plaintiff attorneys' fees, expert witness fees and other costs, including pre-judgment and post-judgment interest thereon to the extent allowed by law; and
7. Such other relief as the Court deems proper.

Respectfully submitted,

COTCHETT, PITRE & McCARTHY, LLP

Dated: October 1, 2015

By: /s/ NANCY L. FINEMAN
NANCY L. FINEMAN
nfineman@cpmlegal.com
840 Malcolm Road
Burlingame, CA 94010
Tel: (650) 697-6000 / Fax: (650) 692-3606

WILLIAM H. RUSSELL
owyhee@comcast.net
1721 Valley View Avenue
Belmont, CA 94002
Tel: (650) 339-2527

Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

COTCHETT, PITRE & McCARTHY, LLP

Dated: October 1, 2015

By: /S/ NANCY L. FINEMAN

NANCY L. FINEMAN

nfineman@cpmlegal.com

840 Malcolm Road

Burlingame, CA 94010

Tel: (650) 697-6000 / Fax: (650) 692-3606

WILLIAM H. RUSSELL

owyhee@comcast.net

1721 Valley View Avenue

Belmont, CA 94002

Tel: (650) 339-2527

Attorneys for Plaintiff

EXHIBIT 1



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

SEP 18 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

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

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

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

Re: Notice of Violation

Dear Mr. Geanacopoulos and Mr. Johnson:

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

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

Law Governing Alleged Violations

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

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

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

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

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

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

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

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

Alleged Violations

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

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

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

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

VW's "road calibration" and "switch" are AECDs¹ that were neither described nor justified in the applicable COC applications, and are illegal defeat devices. Therefore each vehicle identified by the table below does not conform in a material respect to the vehicle specifications described in the COC application. As such, VW violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused any of the foregoing with respect to) one of the hundreds of thousands of new motor vehicles within these test groups. Additionally, VW

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

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

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

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

Enforcement

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip A. Brooks".

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

Copy:

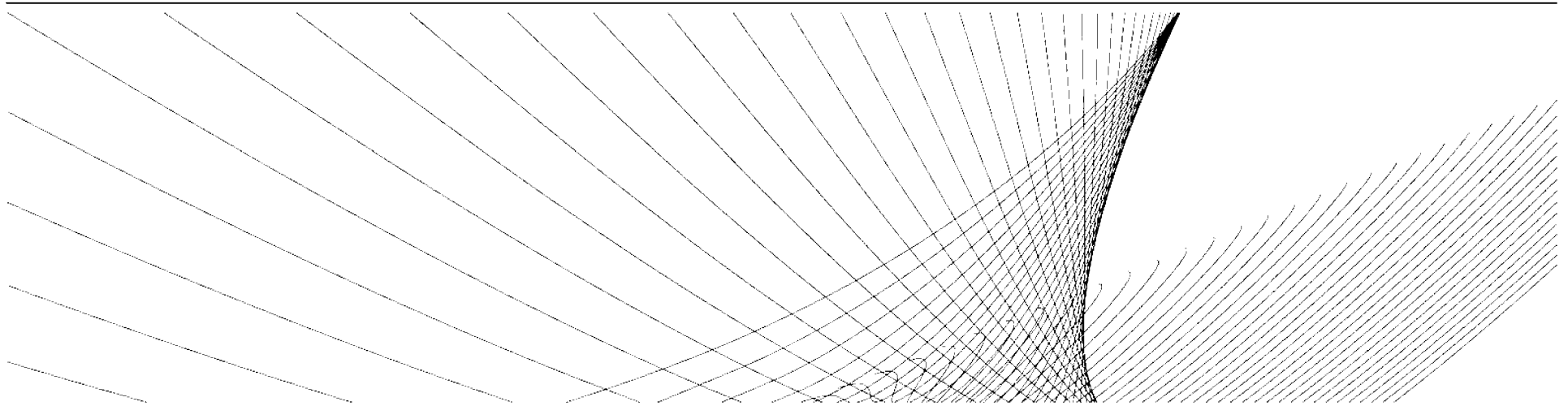
Todd Sax, California Air Resources Board
Walter Benjamin Fisherow, United States Department of Justice
Stuart Drake, Kirkland & Ellis LLP

EXHIBIT 2

VOLKSWAGEN

AKTIENGESELLSCHAFT

GROUP EU REPRESENTATION/VGS



The Volkswagen Group – “Forschungsweltmeister”

Julian Herwig, Environment & Technical Affairs

Volkswagen Group EU Representation

29 January 2015

Global Research Activities

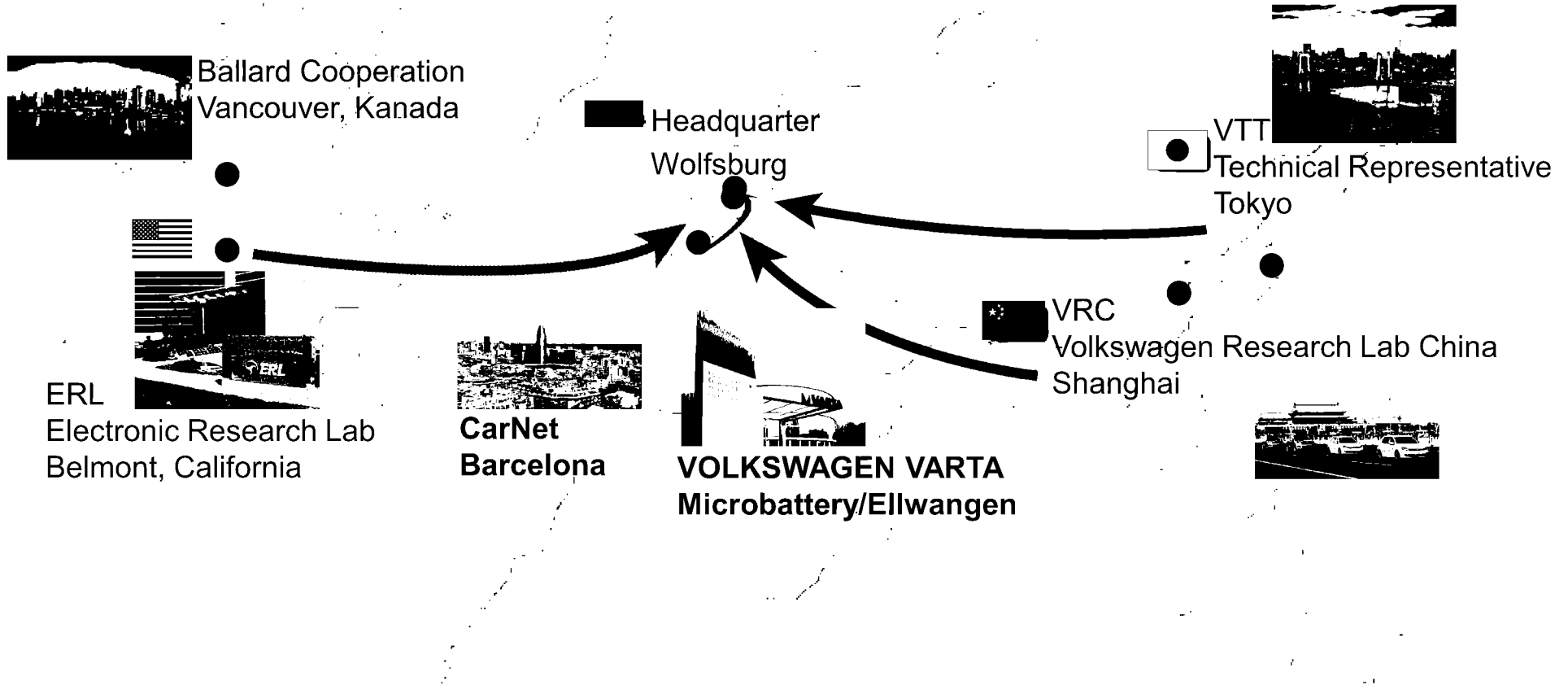


EXHIBIT 3



Matthew Rodriguez
Secretary for
Environmental Protection

Air Resources Board

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



Edmund G. Brown Jr.
Governor

Reference No. IUC-2015-007

September 18, 2015

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

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

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

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

Dear Mr. Geanacopoulos and Mr. Johnson:

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

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California Environmental Protection Agency

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

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

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

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

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

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

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Mr. Geanakopoulos and Mr. Johnson:
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Page 3

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

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

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

Sincerely,



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

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

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

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

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

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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

DANIEL McGARRY, individually, and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Francisco, California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

JOSEPH W. COTCHETT; FRANK M. PITRE
NANCY L. FINEMAN; ALISON E. CORDOVA
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Burlingame, CA 94010
Tel: (650) 697-6000 / Fax: (650) 692-3606

JOSEPH C. WILSON
CURIALE WILSON LLP
One Maritime Plaza, #1000
San Francisco, CA 94111
Tel: (415) 908-1001

DEFENDANTS

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

County of Residence of First Listed Defendant Fairfax County, Virginia
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 2301 et seq.,

Brief description of cause:

Fraud, concealment and intentional deception on class regarding fuel economy of VW and Audi diesel vehicles.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,001.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Hon. Phyllis J. Hamilton

DOCKET NUMBER 4:15-cv-04278-PJH

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☒ (X) SAN FRANCISCO/OAKLAND

☐ () SAN JOSE

☐ () EUREKA

DATE

SIGNATURE OF ATTORNEY OF RECORD

October 1, 2015

/S/ NANCY L. FINEMAN

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

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

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

VIII. RELATED CASES

No.:	Date Filed	Caption	Case No.	Court (Judge)	Law Firm
1.	9/18/15	<i>Fiol v. Volkswagen Group of America, Inc.</i>	4:15-cv-04278	NDCA (PJH)	Hagens Berman
2.	9/20/15	<i>McCabe et al v. Volkswagen Group of America, Inc.</i>	5:15-cv-01930	CDCA (MMM)	Keller Rohrback
3.	9/21/15	<i>Benipayo et al v. Volkswagen Group of America, Inc.</i>	4:15-cv-04314	NDCA (DMR)	Hagens Berman
4.	9/21/15	<i>Bennett v. Volkswagen Group of America, Inc.</i>	3:15-cv-0210	SDCA (LAB)	Law Offices of Alexander M. Schack
5.	9/21/15	<i>Bricker v. Volkswagen Group of America, Inc.</i>	3:15-cv-01785	D. OR (PK)	David F. Sugarman
6.	9/21/15	<i>D'Angelo v. Volkswagen Group of America, Inc.</i>	2:15-cv-07390	CDCA (FMO)	Morris Polich & Purdy
7.	9/21/15	<i>Dell'Aquila and Ullmer v. Volkswagen Group of America, Inc.</i>	8:15-cv-01525	CDCA (DOC)	Donahoo & Associates
8.	9/21/15	<i>Dorn and Haralovich v. Volkswagen Group of America, Inc.</i>	1:15-cv-08286	NDIL (HDL)	Clifford Law Offices
9.	9/21/15	<i>Johnson Sr. and Johnson Jr. v. Volkswagen Group of America, Inc.</i>	2:15-cv-07394	CDCA (MMM)	Kessler Topaz
10.	9/21/15	<i>Karcsay v. Volkswagen Group of America, Inc.</i>	3:15-cv-02110	SDCA (BAS)	Capstone Law APC
11.	9/21/15	<i>Lau et al v. Volkswagen Group of America, Inc. et al</i>	5:15-cv-04302	NDCA (BLF)	Girard Gibbs; Pritzker Levine
12.	9/21/15	<i>Levin v. Volkswagen Group of America, Inc.</i>	2:15-cv-06985	D. NJ (JLL)	Nagel Rice, LLP
13.	9/21/15	<i>Lowrance v. Volkswagen Group of America, Inc. et al</i>	0:15-cv-61993	SDFL (UU)	Schlesinger Law Offices
14.	9/21/15	<i>Mitsuda v. Volkswagen Group of America, Inc. et al.</i>	2:15-cv-07375	CDCA (GW)	McCune Wright
15.	9/21/15	<i>Netkin v. Volkswagen Group of America, Inc.</i>	2:15-cv-07367	CDCA (MMM)	Law Offices of Robert Starr
16.	9/21/15	<i>Redmond v. Volkswagen Group of America, Inc.</i>	5:15-cv-01648	NDAL (MHH)	Mastado & Artrip

No.:	Date Filed	Caption	Case No.	Court (Judge)	Law Firm
17.	9/21/15	<i>Steele v. Volkswagen Group of America, Inc.</i>	2:15-cv-07391	CDCA (BRO)	Girardi Keese
18.	9/21/15	<i>Walker v. Volkswagen Group of America, Inc.</i>	2:15-cv-07395	CDCA (MMM)	Girard Gibbs
19.	9/21/15	<i>Warren Manufacturing Incorporated et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-01655	NDAL (JHE)	Heninger Garrison Davis
20.	9/22/15	<i>Bonda v. Volkswagen Group of America, Inc.</i>	1:15-cv-13419	D. MA (PBS)	Shapiro Haber & Urmey
21.	9/22/15	<i>Catlett v. Volkswagen Group of America, Inc.</i>	2:15-cv-00681	D. UT (DB)	Deiss Law
22.	9/22/15	<i>Clinton and Schonwald v. Volkswagen Group of America, Inc.</i>	1:15-cv-05497	EDNY (DLI)	Weitz & Luxenberg
23.	9/22/15	<i>Criston v. Volkswagen Group of America, Inc.</i>	2:15-cv-06988	D. NJ (JLL)	Golomb & Honik
24.	9/22/15	<i>DeFiesta et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-07012	D. NJ (JLL)	Lieff Cabraser; Grant & Eisenhofer; Seeger Weiss; Carella Byrne
25.	9/22/15	<i>Hall v. Volkswagen Group of America, Inc.</i>	4:15-cv-04340	NDCA (KAW)	Audet & Partners
26.	9/22/15	<i>Harris v. Volkswagen Group of America, Inc.</i>	2:15-cv-00405	SDTX (NGR)	Hillard Munoz & Gonzales
27.	9/22/15	<i>Hendricks v. Volkswagen Group of America, Inc.</i>	5:15-cv-01948	CDCA (SVW)	Levin Fishbein
28.	9/22/15	<i>Kindsvatter and Hughes v. Volkswagen Group of America, Inc. et al</i>	5:15-cv-01958	NDOH (JRA)	Spangenberg Shibley & Liber
29.	9/22/15	<i>MacAuley v. Volkswagen Group of America, Inc. et al</i>	2:15-cv-07430	CDCA (DMG)	Kristensen Weisberg
30.	9/22/15	<i>Naparstek v. Volkswagen Group of America, Inc.</i>	1:15-cv-13418	D. MA (FDS)	Gutride Safier
31.	9/22/15	<i>Silverman v. Volkswagen AG et al</i>	1:15-cv-03332	NDGA (TCB)	Robbins Ross Alloy
32.	9/22/15	<i>Stricklin et al v. Volkswagen Group of America, Inc. et al</i>	2:15-cv-07431	CDCA (DSF)	Bernstein Litowitz

No.:	Date Filed	Caption	Case No.	Court (Judge)	Law Firm
33.	9/22/15	<i>Temkin et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-07432	CDCA (JFW)	Keller Rohrback
34.	9/22/15	<i>Wagner v. Volkswagen Group of America, Inc.</i>	3:15-cv-00748	WDKY (DJH)	Jones Ward
35.	9/22/15	<i>Weiland v. Volkswagen Group of America, Inc. et al</i>	9:15-cv-81316	SDFL (DMM)	Spangenberg Shibley & Liber
36.	9/22/15	<i>Yell v. Volkswagen Group of America, Inc.</i>	2:15-cv-07429	CDCA (AB)	Kasdan Lippsmith
37.	9/23/15	<i>Bullard v. Volkswagen Group of America, Inc.</i>	1:15-cv-00251	EDTN (HSM)	Barrack Rodos & Bacine
38.	9/23/15	<i>Bustamante et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-09278	D. KS (CM)	Kapke Willerth
39.	9/23/15	<i>Carroll v. Volkswagen Group of America, Inc.</i>	2:15-cv-13360	EDMI (GER)	Zimmerman Reed
40.	9/23/15	<i>Claypool v. Volkswagen Group of America, Inc.</i>	2:15-cv-00581	MDFL (JES)	Motely Rice, LLC
41.	9/23/15	<i>Crosson et al v. Volkswagen Group of America, Inc. et al</i>	2:15-cv-07475	CDCA (GW)	Keller Rohrbeck
42.	9/23/15	<i>Endy and Sonabend v. Volkswagen Group of America, Inc. et al</i>	1:15-cv-05516	EDNY (RJD)	Sonnabend Law
43.	9/23/15	<i>Farmer v. Volkswagen Group of America, Inc.</i>	1:15-cv-00615	SDOH (TSB)	Goldenberg Schneider
44.	9/23/15	<i>Gall v. Volkswagen Group of America, Inc. et al</i>	3:15-cv-00106	SDIA (SMR)	Smith & McElwain
45.	9/23/15	<i>Giauque et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-07473	CDCA	Robinson Calcagnie
46.	9/23/15	<i>Handal v. Volkswagen Group of America, Inc.</i>	3:15-cv-02127	SDCA (CAB)	Finkelstein & Krinsk
47.	9/23/15	<i>Henderson v. Volkswagen Group of America, Inc.</i>	1:15-cv-00248	EDTN (CLC)	Siniard Timberlake & League
48.	9/23/15	<i>Henley, Jr. v. Volkswagen Group of America, Inc.</i>	4:15-cv-00734	WDMI (ODS)	Kapke & Willerth
49.	9/23/15	<i>Lance et al v. Volkswagen Group of America, Inc.</i>	3:15-cv-01058	SDIL (NJR)	Wexler Wallace
50.	9/23/15	<i>Lucas et al v. Volkswagen Group of America, Inc.</i>	5:15-cv-01672	NDAL (AKK)	Davis & Norris
51.	9/23/15	<i>Pye Auto Sales, LLC, et al. v. Volkswagen Group of America, Inc.</i>	1:15-cv-03349	NDGA (MHC)	Heninger Garrison Davis, LLC

No.:	Date Filed	Caption	Case No.	Court (Judge)	Law Firm
52.	9/23/15	<i>Shalit et al v. Volkswagen Group of America, Inc.</i>	3:15-cv-04354	NDCA (LB)	Lieff Cabraser Heimann & Bernstein, LLP
53.	9/23/15	<i>Smith v. Volkswagen Group of America, Inc.</i>	2:15-cv-00570	MDFL (JES)	Viles & Beckman
54.	9/23/15	<i>Smith v. Volkswagen Group of America, Inc.</i>	3:15-cv-01053	SDIL (NJR)	Simmons Hanly Conroy
55.	9/23/15	<i>Sonnenburg et al v. Volkswagen Group of America, Inc. et al</i>	1:15-cv-00250	EDTN (HSM)	Patrick, Beard, Schulman
56.	9/23/15	<i>Vinson v. Volkswagen Group of America, Inc.</i>	1:15-cv-00213	WDNC (MR)	Edwards Kirby
57.	9/23/15	<i>Weiss et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-07474	CDCA	Arias Sanguinetti
58.	9/23/15	<i>West v. Volkswagen Group of America, Inc.</i>	3:15-cv-00093	MDGA (CDL)	Blasingame Burch
59.	9/24/15	<i>Anthony Lucas et al. v. Volkswagen Group Of America, Inc., et al</i>	1:15-cv-1988	NDOH (JSG)	Spangenberg Shibley & Liber LLP.
60.	9/24/15	<i>Drury, III, et al v. Volkswagen Group of America, Inc.</i>	3:15-cv-04401	NDCA (JCS)	Gross & Klein
61.	9/24/15	<i>Feldman, et al. v. Volkswagen Group of America, Inc.</i>	1:15-cv-02894	DMA (ELH)	Bernstein and Feldman PA
62.	9/24/15	<i>Goodrich, et al v. Volkswagen Group of America, Inc. et al.</i>	3:15-cv-04397	NDCA (EDL)	The Brandi Law Firm
63.	9/24/15	<i>Hill v. Volkswagen Group of America, Inc.</i>	2:15-cv-07517	CDCA (SVW)	Susman Godfrey
64.	9/24/15	<i>Johnson et al v. Volkswagen Group of America, Inc.</i>	1:15-cv-01225	EDVA (LO)	Kessler Topaz Meltzer & Check, LLP
65.	9/24/15	<i>Kerwood v. Volkswagen Group of America, Inc.</i>	1:15-cv-13435	USDC-MASS (RGS)	Bailey & Glasser
66.	9/24/15	<i>Koudsi Inc. v. Volkswagen Group of America, Inc.</i>	2:15-cv-07477	CDCA	Law Office of Robert Starr

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67.	9/24/15	<i>Mayerson, et al v. Volkswagen Group of America, Inc. et al.</i>	4:15-cv-04390	NDCA (KAW)	Baron & Budd, P.C.
68.	9/24/15	<i>Stanley v. Volkswagen Group of America, Inc.</i>	1:15-cv-02113	USDC-CO (NYW)	Hannon Law Firm, LLC
69.	9/24/15	<i>Triplett v. Volkswagen Group of America, Inc.</i>	0:15-cv-00076	USDC-EDKY (HRW)	Spangenberg Shibley & Liber LLP
70.	9/25/15	<i>Blake, et al v. Volkswagen Group of America, Inc.</i>	3:15-cv-04425	NDCA (JCS)	Aiman-Smith & Marcy
71.	9/25/15	<i>Jamie A. Greene v. Volkswagen Group of America, Inc., et al.</i>	1:15-cv-2857	NDOH (MHW)	Spangenberg Shibley & Liber LLP.
72.	9/25/15	<i>Jelkmann et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-07566	CDCA (JAK)	Law Office of Thomas Haklar
73.	9/25/15	<i>Kalan v. Volkswagen Group of America, Inc.</i>	2:15-cv-07563	CDCA (JAK)	Kirkland & Packard
74.	9/25/15	<i>McMillen et al v. Volkswagen Group of America, Inc. et al</i>	2:15-cv-07615	CDCA (GHW)	Robbins Geller
75.	9/25/15	<i>Mesa, et al. v. Volkswagen group of America, Inc.</i>	1:15-cv-23606	SDFL (FAM)	Criden & Love, PA
76.	9/25/15	<i>Signore et al v. Volkswagen Group of America, Inc. et al</i>	2:15-cv-07564	CDCA (DMG)	Baron Budd
77.	9/25/15	<i>Smith, et al v. Volkswagen Group of America, Inc. et al,</i>	5:15-cv-04403	NDCA (NC)	Cotchett, Pitre & McCarthy, LLP
78.	9/25/15	<i>Studer et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-07560	CDCA (BRO)	Makarem & Associates
79.	9/28/15	<i>Hill et al v. Volkswagen Group of America, Inc. et al</i>	2:15-cv-07604	CDCA (DSF)	Hagens Berman
80.	9/28/15	<i>Howard et al v. Volkswagen Group of America, Inc. et al,</i>	4:15-cv-04467	NDCA (DMR)	Bracamontes and Vlasak, P.C.
81.	9/28/15	<i>Kim et al v. Volkswagen Group of America, Inc.</i>	2:15-cv-07605	CDCA (PSG)	Lieff Cabraser

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82.	9/28/15	<i>McMillen et al v. Volkswagen Group of America, Inc. et al</i>	2:15-cv-07615	CDCA (GHW)	Robbins Geller
83.	10/01/15	<i>Safra v. Volkswagen Group of America, Inc. et al</i>	5:15-cv-04534	NDCA	Cotchett, Pitre & McCarthy, LLP