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

JEFFREY SCOLNICK, PETER TOMASSI, and
ANDREW LEMEN, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC.,

Defendant.

Civil Action No.

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiffs Jeffrey Scolnick, Peter Tomassi, and Andrew Lemen (“Plaintiffs”), individually and on behalf of all others similarly situated, allege the following against Volkswagen Group of America, Inc. (“Defendant” or “Volkswagen”), based where applicable on personal knowledge, information and belief, and the investigation of counsel.

NATURE OF THE ACTION

1. This action is about an unprecedented case of criminal fraud perpetrated on consumers and regulators by one of the world's largest auto manufacturers with regards to the environmental performance of its diesel engines.

2. Since 2009 over 482,000 diesel Volkswagen and Audi vehicles sold in the United States were sold with a "defeat device" to create the impression of high fuel efficiency and high performance with extremely low emissions that complied with applicable environmental regulations. Defendant marketed vehicles with these defeat devices as "green" and environmentally friendly, and also made specific representations regarding various aspects of these vehicles performance attributes and specifications, including the vehicle's horsepower, torque, fuel efficiency, and cargo space. In reality, it turns out that Volkswagen's representations were false and misleading because the promised cleanliness of the vehicles could only be achieved by sacrificing the promised performance attributes and specifications through use of the defeat device.

3. The "defeat device" here is software code that caused the vehicles in question to only turn their full emissions control systems on when emission testing was being conducted. During normal operating conditions, however, the defeat device software code shut the full emissions control systems off.

4. By turning the full emissions control system on during emissions testing, the vehicles in question were able to pass their emissions inspections and emit various pollutants within regulatory limits. However, during normal operating conditions, with the full emissions control systems off because of the defeat device, the vehicles emit pollutants far in excess of allowed levels while also running more powerfully and fuel efficiently (at the expense of being

clean). Indeed, during normal operation the Class Vehicles emitted between 10 and 40 times as much nitrous oxides (“NOx,” the pollutants responsible for the formation of smog) into the environment as is allowed under the Clean Air Act and state regulations.

5. According to the United States Environmental Protection Agency (“EPA”) and the California Air Resources Board (“CARB”), Volkswagen installed its defeat device in the electronic control module of cars equipped with the Type EA 189 2.0-liter turbo diesel engine.

6. The vehicles equipped with the defeat device include the following years, makes, and models: 2009-2015 Volkswagen Jetta; 2009-2015 Volkswagen Beetle; 2009-2015 Volkswagen Golf; 2014-2015 Volkswagen Passat; and 2009-2015 Audi A3 (collectively, the “Class Vehicles”).

7. Additional vehicles and model years may be added to this list of Class Vehicles as new facts are discovered. Particularly, once the existence of the defeat devices became known, the scandal spread worldwide. The Type EA 189 engines have been installed in approximately 11 million vehicles worldwide, including those sold under Volkswagen’s Volkswagen, Audi, Skoda and SEAT brands.

8. Defendant’s violations of the Clean Air Act and various state regulations are detailed in a Notice of Violation the EPA sent to Defendant, as well as in a separate letter CARB sent to Defendant, copies of which are attached to this Complaint as Exhibits A and B, respectively.

9. After being publicly exposed by the EPA and CARB, Volkswagen almost immediately admitted that the subject automobiles contained the defeat device.

10. At a press conference for the U.S. launch of Volkswagen's new 2016 Passat on Monday, September 21, 2015, the head of Volkswagen's U.S. operations, Michael Horn, stated "[W]orst of all, we were dishonest to our customers" and "We totally screwed up."

11. In addition, Volkswagen announced that it was suspending sales of *all* vehicles equipped with diesel engines in the United States until the defeat devices were removed from the Class Vehicles and the Class Vehicles were actually legal to sell within the United States.

12. On September 23, 2015, one day after admitting that 11 million Volkswagen-made cars have software that dupes official emissions tests, Martin Winterkorn, Volkswagen's CEO, resigned from his post, stating: "I am shocked by the events of the past few days . . . Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group."

13. In sum Volkswagen intentionally defrauded government regulators and the car buying public by installing defeat devices into the Class Vehicle, Volkswagen has admitted its misconduct, and purchasers and lessees of the Class Vehicles – Plaintiffs and the Class they seek to represent – have been damaged by Volkswagen's fraudulent conduct as detailed herein.

PARTIES

14. Plaintiff Jeffrey Scolnick is a citizen of the Commonwealth of Massachusetts, residing in Natick, Massachusetts. Scolnick is the original owner of a 2014 Volkswagen Passat TDI SE equipped with a Type EA 189 140-hp, 2.0-liter I-4 diesel engine.

15. Plaintiff Peter Tomassi is a citizen of the State of California, residing in San Francisco, California. Tomassi is the original owner of a 2013 Volkswagen Golf TDI equipped with a Type EA 189 140-hp, 2.0-liter I-4 diesel engine.

16. Plaintiff Andrew Lemen is a citizen of the California, residing in Windsor, California. Lemen is the original owner of a 2011 Volkswagen Jetta Sportwagen TDI 2.0L Auto equipped with a Type EA 189 140-hp, 2.0-liter I-4 diesel engine.

17. Defendant Volkswagen Group of America (“Volkswagen” or “Defendant”) is a New Jersey corporation with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171, and Eastern Regional headquarters located in Woodcliff Lakes, New Jersey.

18. At all relevant times, Volkswagen manufactured, distributed, marketed, sold, leased and warranted the vehicles with defeat devices under the Volkswagen and Audi names throughout the United States. The defeat device, engine, and engine control systems were all designed by Volkswagen or its agents. Volkswagen also developed and distributed its owners’ manuals, warranty materials, advertisements and other promotional materials related to the vehicles containing defeat devices.

JURISDICTION AND VENUE

19. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is a citizen of a state other than that of Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

20. This Court has personal jurisdiction over Defendant because it is incorporated in New Jersey and conducts regular and continuous business in New Jersey.

21. Venue is proper in this District under 28 U.S.C. 1391(b) because Defendant is incorporated under the laws of New Jersey and because Defendant has caused harm to Class members residing in this District.

DEFENDANT'S MISCONDUCT TOLLS THE STATUTE OF LIMITATIONS

A. Discovery Rule Tolling

22. Plaintiffs and members of the proposed Class could not have discovered that Volkswagen concealed and misrepresented the true emissions levels of the Class Vehicles through the use of defeat devices.

23. Volkswagen's efforts to deceive consumers and regulators were the result of painstaking concealment and fraud with respect to Volkswagen's "Clean Diesel" TDI diesel engines, engine control systems and defeat devices.

24. Neither Plaintiffs nor members of the Class could reasonably discover, or have reason to suspect, that Volkswagen intentionally concealed information within its knowledge from federal and state regulators, Volkswagen's dealerships, and consumers. Indeed, the whole purpose of the defeat devices was to conceal the fact that the exhaust emissions actually exceeded amounts allowed by applicable regulations during normal driving conditions.

25. Thus, even a reasonable and diligent investigation by consumers could not have discovered that Volkswagen solely possessed information about the existence of its sophisticated emissions fraud scheme. Plaintiffs and Class members had no way of learning that Volkswagen was flouting applicable federal and state emissions standards as well as consumer law.

B. Tolling Due To Fraudulent Concealment

26. All applicable statutes of limitation have been tolled by Volkswagen's active fraudulent concealment of the facts alleged in this Complaint.

27. Rather than disclosing the Class Vehicles' true performance, fuel economy, emissions, and compliance with federal and state emission standards, Volkswagen actively concealed and misrepresented them through the use of defeat devices.

C. Estoppel

28. Volkswagen was under a continuous duty to disclose to consumers, including Plaintiffs and the other Class members, the facts that it knew about the emissions, fuel economy and performance of the Class Vehicles equipped with defeat devices, and of those vehicles' inability to comply with federal and state emission standards.

29. Volkswagen violated this duty and unlawfully circumvented federal and state emission standards through the use of defeat devices, and Volkswagen intentionally misrepresented the ability of the Class Vehicles to comply with state and federal law regulating vehicle emissions and clean air.

30. Volkswagen is therefore estopped from relying on any statutes of limitation defenses in this action.

FACTUAL BACKGROUND

31. Defendant designed and sold cars that were designed to, and did, mislead consumers and regulators about the vehicles' emissions, fuel efficiency and performance. Despite touting the "green" benefits of its diesel vehicles, Defendant sold Class Vehicles that produced pollution up to 40 times higher than allowed, and then intentionally concealed the truth about those cars through a sophisticated scheme involving defeat devices.

A. Volkswagen Sells The "Green" Diesel Image To Consumers

32. For years, Volkswagen advertised its diesel vehicles as fuel-efficient cars with low emissions that complied with regulatory requirements. Consumers have responded to these advertisements, making Volkswagen the largest seller of diesel passenger vehicles in the United States.

33. While less than 1% of automobiles sold in the U.S. are powered by diesel engines, approximately 23% of automobiles sold by Volkswagen are diesels, with those vehicles making up the bulk of diesel light duty automobile sales in the U.S.

34. Part of Volkswagen's success owes to the promotion of their diesel cars as "clean" and "green" vehicles. In fact, "Clean Diesel" is a marketing term used by Volkswagen to market the vehicles at issue in this action.¹

35. Volkswagen's website boasted that the Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year, respectively.

36. Defendant also supported and directed a website to promote its "green" diesel technology, www.clearlybetterdiesel.org, which states that Volkswagen's technology reduces smog and "meets the highest standards in all 50 states, thanks to . . . innovative engine technology that burns cleaner."

37. In addition to touting the low emissions of the subject vehicles, Volkswagen touted the fuel efficiency of several of the Vehicles, in that they could achieve over 40 miles per gallon of fuel and travel over 800 miles on a tank of fuel.²

38. Further, Volkswagen recently began promoting the performance of its diesel powered automobiles, to overcome the consumer perception that diesel automobiles were slow and sluggish.³

¹ An example of a commercial touting how "clean" Volkswagen diesels is available at <https://www.youtube.com/watch?v=WNS2nvkjARk> ad (last visited October 2, 2015)

² Examples of commercials touting the fuel efficiency of Volkswagen diesels available at <https://www.youtube.com/watch?v=a2CNHVXvNRo> and <https://www.youtube.com/watch?v=wj3if2gRWYE> (last visited October 2, 2015).

³ An example of such a commercial is available at <https://www.youtube.com/watch?v=0VA51xWXZ3g>, (last visited October 2, 2015)

39. As part of its overall marketing campaign emphasizing the Class Vehicle's supposed cleanliness, Volkswagen ran numerous print advertisements that advertised the Class Vehicles' green environmental attributes, fuel efficiency, and power:





Volkswagen Turbo Diesel Injection.

Less fuel consumption with added engine power.



Das Auto.

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](#)



40. While the language and images varied in Volkswagen's marketing varied, the overall message to consumers was the same: that the Class Vehicles were clean, green, powerful, and efficient.

41. Unfortunately for Plaintiffs and all the other members of the Class who purchased their Class Vehicles and paid the prices they paid for them based, at least in part if not in whole, on the veracity of Volkswagen's representations, Volkswagen's representations regarding the environmental, performance, and efficiency characteristics of the Class Vehicles were false and intentionally fraudulent.

B. Volkswagen Intentionally Concealed Its Vehicles' Excessive And Illegal Pollution Emissions.

42. On September 18, 2015, the EPA issued a Notice of Violation ("NOV") to Volkswagen. The NOV details how Defendant installed sophisticated software in the Volkswagen and Audi diesel Class Vehicles that detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the tests. At all other times that the vehicle is in operation, the full emissions controls are deactivated, permitting pollution to be freely released into the environment at levels that far exceed those allowed by federal and state clean air regulators. This software produced and used by Volkswagen is a "defeat device" as defined in the Clean Air Act.

43. Volkswagen programmed the engine control computers in the Class Vehicles with defeat devices to detect when cars are undergoing emissions testing. When testing is occurring, the defeat device alters the vehicle's engine and exhaust systems such that emissions standards are met. When testing is not being performed, the engine control systems operate the vehicle in a way that does not comply with EPA omissions requirements.

44. Moreover, under normal operating conditions (with the defeat device enabled and the full emissions controls turned off), the Class Vehicles engines produce more power and achieve higher fuel efficiency than they would if they complied with EPA emissions requirements by disabling the defeat device and operating with their full emissions control systems turned on.

45. Because of the defeat device software, Defendant's diesel vehicles can seemingly meet emissions standards while emitting nitrogen oxides (NOx) at up to 40 times the standard allowed under federal and state laws and regulations during the normal operation of the vehicles.

46. The Clean Air Act sets emissions standards for vehicles and requires vehicle manufacturers to certify to the EPA that vehicles sold in the United States meet applicable federal emissions standards. All vehicles sold in the United States must be covered by an EPA-issued certificate of conformity. Under federal law, cars equipped with defeat devices, which reduce the effectiveness of emissions control systems during normal driving conditions, cannot be certified.

47. Volkswagen violated the Clean Air Act, defrauded its customers, and engaged in unfair competition by manufacturing and selling the Class Vehicles with defeat devices that allowed for higher levels of emissions than were certified by the EPA.

C. Defendant Charged A Premium For Its “Clean” And “Green” Diesel Technology

48. Volkswagen charged substantial premiums for vehicles equipped with TDI diesel engines and defeat devices.

49. Holding all other factors constant, the MSRP for the Volkswagen and Audi Class Vehicles equipped with a TDI diesel engine coupled with defeat device software code was higher

than was the MSRP for similar trim Volkswagen and Audi vehicles with standard gasoline engines.

D. Volkswagen's Misconduct Has Injured Class Members

50. Despite the EPA ordering Defendant to recall Class Vehicles equipped with defeat devices, purchasers of the subject vehicles have and will continue to suffer significant harm.

51. First, the only way for Volkswagen to make the Class Vehicles comply with emissions standards will be to significantly reduce the vehicles' horsepower, torque, fuel efficiency, and/or cargo space. Thus, if made EPA compliant, Class members will suffer actual harm and damages because their vehicles will no longer perform as advertised and warranted.

52. Second, Class members' Class Vehicles will suffer from a significant diminution value by being made EPA compliant, because not only did Class members overpay for their vehicles, but they will be forced to pay much more to fuel their less fuel efficient vehicles.

53. Thus, owners of Class Vehicles equipped with defeat devices have suffered losses of money or property because of Volkswagen's unfair, deceptive, and/or fraudulent business practices, and its failures to disclose the true emissions of the vehicles.

54. In addition, Volkswagen charged premiums of several thousands of dollars for the Clean Diesel models of the Class Vehicles.

55. Had Volkswagen revealed the truth about their vehicles – that they were non-compliant with government regulations and could not pass emissions tests – consumers would likely have taken their business to other automobile manufacturers. Thus, as a result of the conduct described herein, Volkswagen enjoyed significant and unjustified sales and corresponding profits directly as a result of its wrongful conduct.

56. Had Plaintiffs and the Class members known of the defeat device at the time they purchased or leased their vehicles, they would not have purchased or leased their vehicles, or they would have paid less than they did. Even if Volkswagen recalls the defeat device vehicles and degrades the engine performance of the vehicles to make them compliant with EPA standards, Plaintiffs and Class members will be forced to spend more on fuel and will not receive the advertised performance of their vehicles. The recalled vehicles will be worth less in the used marketplace because of their decrease in performance and efficiency, which means that owners of these vehicles will not be able to recoup the expected value of these vehicles in the future.

PLAINTIFFS' FACTS

57. Jeffrey Scolnick is the owner of a 2014 Volkswagen Passat TDI SE equipped with a Type EA 189 diesel engine.

58. Scolnick purchased his car based, in part, on Volkswagen's representations regarding the car's performance attributes (including Volkswagen's representations of 140 horsepower and 236 foot-pounds of torque, and fuel economy), specifications (including cargo volume of 15.9 cubic feet), and environmental characteristics (including those found on the car's EPA fuel economy label as well as Volkswagen's characterizations of the car as a "clean diesel" that complied with all applicable emissions standards and regulations).

59. Scolnick would not have purchased the vehicle, or would not have paid the price he had paid for it, if he had known that the vehicle did not, in fact, actually comply with all applicable emissions standards and regulations, and was not a "clean diesel" as Volkswagen had represented it.

60. In addition, to the extent Volkswagen can bring Scolnick's car into compliance with applicable emissions standards and regulations through future modifications made in a

recall, such modifications will negatively impact the performance attributes (including horsepower and torque), specifications (including cargo space), environmental characteristics (including fuel economy, causing plaintiff to incur higher fuel costs than he otherwise would have to pay), and feel (including acceleration) Scolnick had paid for.

61. Scolnick has been further injured in that his vehicle has suffered reduced resale value as a result of Volkswagen's conduct as described herein.

62. Peter Tomassi is the owner of a 2014 Volkswagen Golf TDI equipped with a Type EA 189 diesel engine.

63. Tomassi purchased his car based, in part, on Volkswagen's representations regarding the car's performance attributes (including Volkswagen's representations of 140 horsepower and 236 foot-pounds of torque, and fuel economy), specifications (including cargo volume of 15.2 cubic feet), and environmental characteristics (including those found on the car's EPA fuel economy label as well as Volkswagen's characterizations of the car as a "clean diesel" that complied with all applicable emissions standards and regulations).

64. Tomassi would not have purchased the vehicle, or would not have paid the price he had paid for it, if he had known that the vehicle did not, in fact, actually comply with all applicable emissions standards and regulations, and was not a "clean diesel" as Volkswagen had represented it.

65. In addition, to the extent Volkswagen can bring Tomassi's car into compliance with applicable emissions standards and regulations through future modifications made in a recall, such modifications will negatively impact the performance attributes (including horsepower and torque), specifications (including cargo space), environmental characteristics

(including fuel economy, causing plaintiff to incur higher fuel costs than he otherwise would have to pay), and feel (including acceleration) Tomassi had paid for.

66. Tomassi has been further injured in that his vehicle has suffered reduced resale value as a result of Volkswagen's conduct as described herein.

67. Andrew Lemen is the owner of a 2011 Volkswagen Jetta Sportwagen TDI 2.0L Auto equipped with a Type EA 189 diesel engine.

68. Lemen purchased his car based, in part, on Volkswagen's representations regarding the car's performance attributes (including Volkswagen's representations of 140 horsepower and 236 foot-pounds of torque, and fuel economy), specifications (including cargo volume of 32.8 cubic feet), and environmental characteristics (including those found on the car's EPA fuel economy label as well as Volkswagen's characterizations of the car as a "clean diesel" that complied with all applicable emissions standards and regulations).

69. Lemen would not have purchased the vehicle, or would not have paid the price he had paid for it, if he had known that the vehicle did not, in fact, actually comply with all applicable emissions standards and regulations, and was not a "clean diesel" as Volkswagen had represented it.

70. In addition, to the extent Volkswagen can bring Lemen's car into compliance with applicable emissions standards and regulations through future modifications made in a recall, such modifications will negatively impact the performance attributes (including horsepower and torque), specifications (including cargo space), environmental characteristics (including fuel economy, causing plaintiff to incur higher fuel costs than he otherwise would have to pay), and feel (including acceleration) Lemen had paid for.

71. Lemen has been further injured in that his vehicle has suffered reduced resale value as a result of Volkswagen's conduct as described herein.

72. On October 2, 2015, Plaintiffs Scolnick, Tomassi, and Lemen, both individually and on behalf of the Class they seek to represent, through their counsel, sent written notice of their warranty and consumer protection act claims to Volkswagen's counsel.

73. All conditions precedent to any claims asserted herein have occurred or been performed.

CLASS ACTION ALLEGATIONS

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

All persons or entities in the United States who are current owners and/or lessees of a Volkswagen or Audi vehicle with a Type EA 189 2.0-liter turbo diesel engine, including, without limitation: 2009-2015 Volkswagen Jetta; 2009-2015 Volkswagen Beetle; 2009-2015 Volkswagen Golf; 2013-2015 Volkswagen Passat; and 2009-2015 Audi A3 (the "Class Vehicles").

Plaintiffs refer to this proposed class definition as the "Nationwide Class."

75. Plaintiff Scolnick also brings this action and individually and as a class action, pursuant to the Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following proposed class:

All persons or entities in Massachusetts who are current owners and/or lessees of a Volkswagen or Audi vehicle with a Type EA 189 2.0-liter turbo diesel engine, including, without limitation: 2009-2015 Volkswagen Jetta; 2009-2015 Volkswagen Beetle; 2009-2015 Volkswagen Golf; 2013-2015 Volkswagen Passat; and 2009-2015 Audi A3 (the "Class Vehicles").

Plaintiffs refer to this proposed class definition as the "Massachusetts Class."

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

All persons or entities in California who are current owners and/or lessees of a Volkswagen or Audi vehicle with a Type EA 189 2.0-liter turbo diesel engine, including, without limitation: 2009-2015 Volkswagen Jetta; 2009-2015 Volkswagen Beetle; 2009-2015 Volkswagen Golf; 2013-2015 Volkswagen Passat; and 2009-2015 Audi A3 (the “Class Vehicles”).

Plaintiffs refer to this proposed class definition as the “California Class.”

77. The Nationwide Class, Massachusetts Class, and California Class are referred to collectively as the “Class.”

78. Excluded from the Class are individuals who have personal injury claims resulting from the defeat device in the Class Vehicles. Also excluded from the Class are Volkswagen and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and his or her immediate family.

79. Plaintiffs reserve the right to revise the Class definition based upon information learned through discovery.

80. The “Class Period” is 2008 through and including the present – the time period on which Volkswagen sold Class Vehicles.

81. Plaintiffs reserve the right to review the Class Period definition based on information learned through discovery.

82. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis as would be used to prove those elements individual actions alleging the same claim.

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

84. **Numerosity.** The members of the class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs believe that there are not less than hundreds of thousands of members of the class, the precise number of Class member is unknown at this time, but may be ascertained from Volkswagen's records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, or published notice.

85. **Commonality.** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including:

- a. Whether Volkswagen engaged in the conduct alleged herein;
- b. Whether Volkswagen designed, advertised, marketed, distributed, leased, sold, or otherwise placed Class Vehicles into the stream of commerce in the United States;
- c. Whether the Clean Diesel engine system in the Class Vehicles contains a defect in that it does not comply with EPA requirements;
- d. Whether the Clean Diesel engine systems in the Class Vehicles can be made to comply with EPA standards without substantially degrading the performance, specifications, or efficiency of the Class Vehicles;
- e. Whether Volkswagen knew about the defeat device and, if so, how long it possessed this knowledge;

- f. Whether Volkswagen designed, manufactured, and distributed the Class Vehicles with a defeat device;
- g. Whether Volkswagen engaged in the conduct alleged herein intentionally;
- h. Whether Volkswagen's conduct violates consumer protection statutes, warranty laws, and other laws as asserted herein;
- i. Whether Plaintiffs and the other Class members overpaid for their Vehicles;
- j. Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or other injunctive relief; and
- k. Whether Plaintiffs and the other Class members are entitled to compensatory damages and other monetary relief and, if so, in what amount;
- l. Whether Plaintiffs and the other Class members are entitled to punitive damages and, if so, in what amount.

86. **Typicality.** Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Volkswagen's wrongful conduct as described above.

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

88. **Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2).**

Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

89. **Superiority.** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Volkswagen, so it would be impracticable for members of the Class to individually seek redress for Volkswagen's wrongful conduct.

90. Should individual Class Members be required to bring separate actions, this Court and/or courts throughout the United States would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

COUNT I
(Common Law Fraud)
(On Behalf of the Nationwide Class)

91. Plaintiffs repeat the allegations in paragraphs 1-90 as if fully set forth herein.

92. Plaintiffs bring this claim on behalf of the Nationwide Class.

93. Volkswagen engaged in both speaking and silent fraud, and in fraudulent and deceptive conduct, throughout the Class Period. As described above, Volkswagen's conduct defrauded Plaintiffs and Class Members, intending and leading them to believe, through affirmative misrepresentations, omissions, suppression and concealments of material fact, that the Class Vehicles, marketed by Volkswagen as "Clean Diesel" vehicles, possessed important characteristics that they in fact did not possess – namely the combination of low emissions, high performance, and high fuel economy – inducing their purchases.

94. Volkswagen's intentional and material misrepresentations included, among other things, its advertising, marketing materials and messages, and other standardized statements claiming the Class Vehicles (a) were clean and eco-friendly and (b) combined low emissions with high performance and strong fuel economy.

95. The foregoing misrepresentations were uniform across all Class Members. The same advertisements were shown to all members of the public generally and the same marketing materials were distributed to customers and potential customer, and all of the materials contained the same standardized statements relating to the Class Vehicles' environmental friendliness, performance and fuel economy.

96. These representations directly contradicted the true nature and hidden design of the Class Vehicles and their actual emissions when operating under normal circumstances. Volkswagen knew the representations were false when it made them, and intended to defraud purchasers thereby.

97. Volkswagen also had a duty to disclose, rather than conceal and suppress, the full scope and extent of the emissions deception because:

- a. Volkswagen had exclusive knowledge of the actual emissions in the Class Vehicles and concealment thereof;
- b. The details regarding the actual emissions in the Class Vehicles and concealment thereof were known and/or accessible only to Volkswagen;
- c. Volkswagen knew Plaintiffs and Class Members did not know and could not reasonably discover the actual emissions in the Class Vehicles and concealment thereof; and
- d. Volkswagen made general representations about the qualities of the Class Vehicles, including statements about their performance, fuel economy, and emissions, which were misleading, deceptive and incomplete without the disclosure of the fact that Volkswagen secretly designed and installed defeat device software on the Class Vehicles that was intended to conceal the Vehicles' exceedingly high and illegal emission levels from governments, consumers, and the public.

98. Volkswagen's concealment was likewise uniform across all Class Members in that Volkswagen concealed from everyone other than itself, including potential customers and regulators, the true facts relating to the emission levels of the Class Vehicles.

99. Volkswagen's misrepresentations and omissions were material in that they would affect a reasonable consumer's decision to purchase or lease a Class Vehicle. Consumers paid a premium for the clean diesel Class Vehicles precisely because they supposedly offered low emissions and superior fuel economy without sacrificing performance. Volkswagen's conduct, misrepresentations, omissions, concealment, and suppression, undermined the core value

proposition that induced consumers to purchase or lease the Class Vehicles, and directly affect both the quality and worth of the Vehicles.

100. Volkswagen's intentionally deceptive conduct – its silent fraud and fraud by concealment – likewise induced the Class Vehicles' purchase by Plaintiffs and Class Members, and the resulting harm and damage to them.

101. Plaintiffs and Class Members relied upon Volkswagen's misrepresentations and concealment of the true facts. Class Members are presumed to have relied upon Volkswagen's misrepresentations and concealment of the true facts because those facts are material to a reasonable consumer's purchase the Class Vehicles.

102. As a result of Volkswagen's inducements, Plaintiffs and Class Members have sustained significant damage, including, but not limited to, lost vehicle value and diminished vehicle quality and utility. If Plaintiffs and Class members had known about the defeat device and the unlawful emissions at the time of acquisition, they would not have acquired the Class Vehicles. Indeed, the Class Vehicles could not have been marketed or sold to any reasonable consumer had existence of the defeat device been disclosed. Volkswagen is therefore liable to Plaintiffs and Class Members in an amount to be proven at trial.

103. Volkswagen intentionally designed and engineered its "clean diesel" Class Vehicles to deceive and cheat regulators and its customers. Volkswagen touted the performance and environmental virtues of these Class Vehicles, while concealing and suppressing the truth about them, for the purpose of inducing Plaintiffs and the Class members to buy them. Volkswagen's fraud caused both the purchase and the harm. In order to undo this harm, Volkswagen must repair or remediate the Class Vehicles so that they deliver everything Volkswagen promised when it sold them, or undertake to buy them back from Class Members in

terms that are just and equitable under principles of rescission, restitution, and benefit of the bargain.

104. Volkswagen's conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for the rights and interests of Plaintiffs, the public, and the environment. Volkswagen's conduct thus warrants an assessment of punitive damages at the highest level allowed by applicable law, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

COUNT II
(Breach of Express Warranty)
(On Behalf of the Nationwide Class)

105. Plaintiffs repeat the allegations in paragraphs 1-90 as if fully set forth herein.

106. Plaintiffs bring this claim on behalf of the Nationwide Class.

107. By advertising the "green" and "clean" qualities of its diesel engines, Defendant expressly warranted to purchasers of the Class Vehicles that the Class Vehicles at least complied with all applicable laws and regulations relating to exhaust emissions. Stated differently, it would be impossible for an automobile to be "green" if it emitted more pollutants than were allowed by applicable environmental laws and regulations.

108. Such statements became the basis of the bargain for Plaintiffs and other purchasers of the Class Vehicles because such statements are among the facts a reasonable consumer would consider material in the purchase of any vehicle, including the Class Vehicles.

109. In fact, in ordinary driving conditions, the Class Vehicles did not comply with applicable environmental regulations, emitting between 10 and 40 times the amount of pollutants allowed. As such, it was unlawful for Defendant to sell the Class Vehicles to the public.

110. In addition, Defendant stated that the Class Vehicles achieved certain fuel efficiency in terms of miles per gallon of fuel when tested in accordance with applicable EPA regulations. Those statements created an express warranty that, under EPA test conditions, the Class Vehicles achieved the stated fuel efficiency for purposes of making apples-to-apples comparisons with other vehicles.

111. Testing under EPA regulations presupposes that the vehicles comply with all laws and regulations applicable to automobiles, including environmental regulations.

112. In fact, had the Class Vehicles been tested in accordance with EPA emissions regulations (*i.e.*, without the defeat device), they would have achieved significantly lower fuel efficiency than was stated on the EPA mileage sticker on the vehicle.

113. All conditions precedent to this claim have occurred or been performed.

114. As a result of the foregoing breaches of express warranty, Plaintiffs and other members of the Class have been damaged in that they purchased a vehicle that was unlawful to have been sold in the first instance, and, even if lawfully sold, was less valuable than what they paid for the Class Vehicles because the Class Vehicles do not comply with applicable environmental regulations and cost more to operate because, if they are repaired to conform with applicable environmental regulations, they will be less efficient to operate and incur higher fuel costs.

COUNT III
(Breach of Implied Warranty of Merchantability)
(On Behalf of the Nationwide Class)

115. Plaintiffs repeat the allegations in paragraphs 1-90 as if fully set forth herein.

116. Plaintiffs bring this claim on behalf of the Nationwide Class.

117. Section 2-314 of the Uniform Commercial Code provides that, unless disclaimed, there is an implied warranty of merchantability with respect to the goods being purchased.

118. Among the warranties included within the implied warranty of merchantability is that the goods would pass without objection in the trade under the contract description.

119. For the reasons set forth above, the Class Vehicles would not pass without objection in the trade because the retail sale by the manufacturer of a vehicle that contains a defeat device is unlawful.

120. In addition, the Class Vehicles are not adequately labeled because they misstate that the Class Vehicles comply with EPA regulations, and the stated gas mileage for comparison purposes was not achieved by testing in accordance with EPA testing procedures.

121. All conditions precedent to this claim have occurred or been performed.

122. As a result of the foregoing breaches of warranty, Plaintiffs and other members of the Class have been damaged in that they purchased a vehicle that was unlawful to have been sold in the first instance, and, even if lawfully sold, was less valuable than what they paid for the Class Vehicles because the Class Vehicles do not comply with applicable environmental regulations and cost more to operate because, if they are repaired to conform with applicable environmental regulations, they will be less efficient to operate and incur higher fuel costs.

COUNT IV
(Magnuson-Moss Act (15 U.S.C. §§ 2301, *et seq.*) – Implied Warranty)
(On Behalf of the Nationwide Class)

123. Plaintiffs repeat the allegations in paragraphs 1-90 as if fully set forth herein.

124. Plaintiffs bring this claim on behalf of the Nationwide Class.

125. The Class Vehicles are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

126. Plaintiffs and Class members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3). They are consumers because they are persons entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.

127. Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

128. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

129. Defendant provided Plaintiffs and the other Class members with an implied warranty of merchantability in connection with the purchase or lease of their Class Vehicles that is an “implied warranty” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7). As a part of the implied warranty of merchantability, Defendant warranted that the Class Vehicles would pass without objection in the trade as designed, manufactured, and marketed, and were adequately labeled.

130. Defendant breached these implied warranties, as described in more detail above, and are therefore liable to Plaintiffs and the Class members pursuant to 15 U.S.C. § 2310(d)(1).

131. Any efforts to limit the implied warranties in a manner that would exclude coverage of the Class Vehicles is unconscionable, and any such effort to disclaim, or otherwise limit, liability for the Class Vehicles is null and void.

132. Plaintiffs and the other Class members have had sufficient direct dealings with either Defendant or its agents (dealerships) to establish privity of contract.

133. Nonetheless, privity is not required here because Plaintiffs and other Class members are intended third-party beneficiaries of contracts between Defendant and its dealers,

and specifically, of the implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit purchasers and lessees of the Class Vehicles.

134. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are not required to give the Vehicle Manufacturer Defendants notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

135. All conditions precedent to this claim have occurred or been performed.

136. The amount in controversy of Plaintiffs' individual claims meet or exceed the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. Plaintiffs, individually and on behalf of the other Class members, seek all damages permitted by law, including diminution in value of their Class Vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and the other Class members in connection with the commencement and prosecution of this action.

137. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C. § 2310(d)(1).

COUNT V
(Unjust Enrichment)
(On Behalf of the Nationwide Class)

138. Plaintiffs repeat the allegations in paragraphs 1-90 as if fully set forth herein.

139. Plaintiffs bring this claim on behalf of the Nationwide Class.

140. This equitable claim is pleaded in the alternative to Plaintiffs and the other Class members' legal claims.

141. Plaintiffs and the Class members conferred a benefit on Defendant when they purchased or leased their Class Vehicles.

142. Defendant has been unjustly enriched in that it intentionally sold vehicles with defeat devices which were intended to mask the fact that the Class Vehicles did not comply with applicable automobile exhaust regulations and, in fact, emitted between 10 and 40 times the pollutant allowed by those regulations.

143. When purchasing their vehicles, Plaintiffs and other Class members reasonably believed that the Class Vehicles complied with applicable environmental regulations and, if properly tested in accordance with EPA mileage standards, would achieve for comparison purposes the mileage stated on the window sticker of the Class Vehicles.

144. Plaintiffs and other Class members got less than what they paid for in that the Class Vehicles did not comply with applicable environmental regulations, nor was the EPA mileage stated on the sticker usable for comparison purposes for other vehicles.

145. The foregoing did not occur by happenstance or conditions out of Defendant's control. In fact, the Class Vehicles were deliberately designed to comply with environmental regulations only when being tested and were known and intended by Defendant to not comply with applicable regulations under ordinary driving conditions.

146. It would be inequitable, unconscionable, and unjust to permit Defendant to retain the benefits they obtained from Plaintiffs and Class members purchases and leases of Class Vehicles.

147. Plaintiffs and the other Class members, having been injured by Defendant's unconscionable conduct, are entitled to restitution or disgorgement of profits as a result of the unjust enrichment of Defendant to their detriment.

COUNT VI
(Violation of the New Jersey Consumer Fraud Act (N.J.S.A. 56:8-1 *et seq.*)
(On Behalf of the Nationwide Class)

148. Plaintiffs repeat the allegations in paragraphs 1-90 as if set forth fully herein.

149. Plaintiffs bring this claim on behalf of the Nationwide Class.

150. Defendant Volkswagen Group of America is a New Jersey corporation.

151. The New Jersey Consumer Fraud Act (N.J.S.A. 56:8-1 *et seq.*) ("NJCFA") states, in relevant part:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . . whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice" N.J.S.A. 56:8-2.

152. The Plaintiffs and the Class members are consumers who purchased and/or leased Class Vehicles for personal, family, or household use.

153. Volkswagen's advertisement, promotion, distribution, supply, sale, or lease of subject vehicles is a "sale or advertisement" of "merchandise" governed by the NJCFA.

154. Prior to Plaintiffs and the Class member's purchase of the subject vehicles, Defendant violated the NJCFA in the following respects:

- a. Defendant made uniform representations that its diesel vehicles were of a particular standard, quality, or grade when they were and are not, and that they would perform as represented when they did not, as set forth above;
- b. Made false and/or misleading statements about the capacity and characteristics of subject vehicles that, as set forth above, were unfair, deceptive, or otherwise fraudulent, had and continue to have the capacity to, and did, deceive the public and cause injury to Plaintiffs and Class Members.

155. Defendant, in their communications with and disclosures to the Plaintiffs and Class members, intentionally concealed or otherwise failed to disclose that the subject vehicles included a software program designed to cheat emissions testing, and that the true emissions of those vehicles here far higher than claimed.

156. Plaintiffs and Class members reasonably expected that the subject vehicles complied with the represented and claimed emissions both prior to and at the time of purchase, and reasonably expected that Defendant did not use software or any other device or system to cheat emissions testing. These representations and affirmations of fact made by Defendant, and the facts concealed or failed to disclose are material facts that were likely to deceive reasonable consumers, and that reasonable consumers would, and did, rely upon in deciding whether or not to purchase or lease a Class Vehicle. Defendant intended for consumers, like the Plaintiffs and Class members to rely on these material facts.

157. Defendant had exclusive knowledge that the Class Vehicles had and have the defects set forth above, facts which were unknown to the Plaintiffs and Class members. Due to Defendant's exclusive knowledge of these material facts, it gave rise to a duty to disclose these facts. Defendant failed to disclose these material facts.

158. The injury to consumers by this conduct greatly outweighs any alleged countervailing benefits to consumers or competition under all circumstances. There is a strong

public interest in reducing emission levels, as well as truthfully advertising the performance, characteristics, and emissions levels of vehicles.

159. Had Plaintiffs and the Class members known about Defendant's use of the software device to cheat the emissions test, and/or that the Class Vehicles did not comply with Defendant's advertised performance or emissions characteristics and did not operate as advertised, they would not have purchased and used the Class Vehicles.

160. As a direct and proximate result of Defendant's actions, Plaintiffs and Class members have suffered ascertainable loss and other damages.

161. Plaintiffs and Class members have been reduced in value and may be further reduced in value should they be unable to be legally registered or sold.

COUNT VII
(Violation of the Massachusetts Consumer Protection Act)
(Mass. Gen. Laws Ch. 93A, *et seq.*)
(On Behalf of the Massachusetts Plaintiff and the Massachusetts Class)

162. Plaintiff Jeffrey Scolnick repeats the allegations in paragraphs 1-90 as if fully set forth herein.

163. Plaintiff Scolnick brings this claim on behalf of the Massachusetts Class.

164. Defendant's conduct as set forth herein constitutes unfair and deceptive acts or practices in violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93A, including but not limited to Defendant's intentional design, manufacture, and marketing of Class Vehicles with a defeat device that hid the Class Vehicles true performance and emissions characteristics.

165. Defendant engages in the conduct of trade or commerce, and the misconduct alleged herein occurred in trade or commerce.

166. Plaintiff Scolnick, individually and on behalf of the other Massachusetts Class members, has made a demand on Volkswagen pursuant to Mass. Gen. Laws Ch. 93A, § 9(3).

167. On information and belief, Defendant does not maintain a place of business or keep assets within the Commonwealth of Massachusetts, relieving Plaintiff Scolnick and the Massachusetts class of the demand requirements of Mass. Gen. Laws Ch. 93A, § 9(3).

168. Plaintiff Scolnick and the Massachusetts Class have been injured by Defendant's unfair and deceptive acts and practices and seek monetary and equitable relief under the Massachusetts Consumer Protection Act.

COUNT VIII

**(Breach of Implied Warranties in Violation of the Song-Beverly Consumer Warranty Act)
(Cal. Civ. Code Section 1790, *et seq.*)
(On Behalf of the California Plaintiffs and the California Class)**

169. Plaintiffs Tomassi and Lemen repeat the allegations in paragraphs 1-90 as if fully set forth herein.

170. Plaintiffs Tomassi and Lemen assert this claim on behalf of the California Class.

171. Plaintiffs Tomassi and Lemen and California Class members who purchased the Class Vehicles in California are “buyers” within the meaning of Cal. Civ. Code §1791(b).

172. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code §1791(a).

173. Volkswagen is a “manufacturer” and/or “distributor” of the Class Vehicles within the meaning of Cal. Civ. Code §§1791(e) and (j).

174. Volkswagen made implied warranties to Plaintiffs Tomassi and Lemen and California Class members within the meaning of Cal. Civ. Code §1791.1.

175. Volkswagen impliedly warranted to Plaintiffs Tomassi and Lemen and California Class members who purchased and/or leased the Class Vehicles that they were “merchantable” within the meaning of Cal. Civ. Code §§1791.1(a) & 1792.

176. The Class Vehicles are not merchantable as a result of the inclusion of the defeat device. Moreover, Volkswagen breached these implied warranties, as described in more detail above, and is therefore liable to Plaintiffs Tomassi and Lemen and California Class members.

177. The Class Vehicles are not of the quality that a buyer would expect and are not merchantable. Because the Class Vehicles are not merchantable, Volkswagen breached the implied warranty of fitness within the meaning of Cal. Civ. Code §§1791.1(b) and 1792.1.

178. As a proximate result of Volkswagen’s breach of the implied warranties of merchantability and fitness, Plaintiffs Tomassi and Lemen and California Class members sustained damages. Pursuant to Cal. Civ. Code §§1791.1(d), 1794(a), and (b)(2), Plaintiffs Tomassi and Lemen and California Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase/lease price of the Vehicles or any diminution in value. Plaintiffs Tomassi and Lemen and California Class members are also entitled to costs and attorneys’ fees pursuant to Cal. Civ. Code §1794.

COUNT IX
(Violation of the Consumers Legal Remedies Act (“CLRA”),
(Cal. Civ. Code Section 1750, *et seq.*))
(On Behalf of the California Plaintiffs and the California Class)

179. Plaintiffs Tomassi and Lemen repeat the allegations in paragraphs 1-90 as if fully set forth herein.

180. Plaintiffs Tomassi and Lemen assert this claim on behalf of the California Class.

181. Volkswagen is a “person” under Cal. Civ. Code §1761(c).

182. Plaintiffs Tomassi and Lemen and California Class members are “consumers” under Cal. Civ. Code §1761(d).

183. Plaintiffs Tomassi and Lemen and California Class members engaged in “transactions” under Cal. Civ. Code §1761(e), including the purchase or lease of Class Vehicles from Volkswagen.

184. As set forth herein, Volkswagen’s acts, policies, and practices undertaken in transactions intended to result and which did result in the sale or lease of Class Vehicles, violate sections 1770(a)(5), (a)(7), (a)(9), (a)(14), and (a)(16) of the CLRA in that: (a) Volkswagen represented that its Class Vehicles have characteristics, uses, or benefits which they do not have; (b) Volkswagen represented that its Class Vehicles are of a particular standard, quality, or grade, but are of another; (c) Volkswagen advertised its Class Vehicles with intent not to sell/lease them as advertised; (d) Volkswagen represented that a transaction conferred or involved rights, remedies, or obligations which it did not have or involve; and (e) Volkswagen represented that its Class Vehicles were supplied in accordance with a previous representation when they were not.

185. The existence of the defeat device is a material fact. Plaintiffs Tomassi and Lemen and California Class members were unaware of the defeat device when they purchased or leased their Class Vehicles. Consumers value reliability and dependability of automobiles, especially concerning emissions in the Class Vehicles. Had they known of the defeat device, Plaintiffs Tomassi and Lemen and California Class members would not have purchased or leased their Class Vehicles, or would have done so only at lower prices.

186. Reasonable consumers expect that Class Vehicles, as “clean diesel” vehicles, possess important characteristics that they in fact did not possess, namely the combination of low emissions, high performance, and fuel economy.

187. Volkswagen had a duty to disclose the defeat device in Class Vehicles for various reasons, including that: (a) the defeat device’s existence is contrary to Volkswagen’s representations and consumers’ expectations; (b) Volkswagen’s concealment and/or failure to disclose the defeat device was likely to deceive reasonable consumers; (c) Volkswagen’s intentional concealment of the defeat device was intended to defraud consumers; and (d) Volkswagen’s concealment of the defeat device harmed Plaintiffs Tomassi and Lemen and California Class members.

188. As a proximate result of Volkswagen’s conduct described above, Plaintiffs Tomassi and Lemen and California Class members have suffered harm.

189. Pursuant to the provisions of Cal. Civ. Code §1780, Plaintiffs Tomassi and Lemen and California Class members seek: (a) an order enjoining Volkswagen from the unlawful practices described herein, (b) a declaration that Volkswagen’s conduct violates the CLRA, and (c) attorneys’ fees and costs of litigation.

190. Pursuant to the provisions of Cal. Civ. Code Section 1780, Plaintiffs Tomassi and Lemen and California Class members will be notifying Volkswagen in writing of the CLRA violations and request that Volkswagen cure the violations. Should Volkswagen not comply with Plaintiff’s request, Plaintiffs intend to amend his complaint and seek damages under the CLRA.

COUNT X
Violation of California Unfair Competition Law
(Cal. Bus. & Prof. Code Section 17200, *et seq.*)
(On Behalf of the California Plaintiffs and the California Class)

191. Plaintiffs Tomassi and Lemen repeat the allegations in paragraphs 1-90 as if fully set forth herein.

192. Plaintiffs Tomassi and Lemen assert this claim on behalf of the California Class.

193. Volkswagen's acts and practices, as alleged in this Complaint, constitute unlawful, unfair and/or fraudulent business practices, in violation of the Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*

194. The business practices engaged in by Volkswagen that violate the Unfair Competition Law include failing to disclose the defeat device at the point of sale, the point of repair, or otherwise.

195. Volkswagen engaged in unlawful business practices by violating the CLRA; the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.*; the TREAD (Transportation Recall Enhancement, Accountability, and Documentation Act) Act, codified at 49 U.S.C. §30101, *et seq.*, by failing to timely disclose the defeat device to NHTSA or consumers; and by engaging in conduct, as alleged herein, that breached implied warranties.

196. Volkswagen engaged in unfair business practices by, among other things: (a) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs Tomassi and Lemen and California Class members; (b) engaging in conduct that undermines or violates the stated policies underlying the CLRA; the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.*; the TREAD Act, codified at 49 U.S.C. §30101, *et seq.*, all of which seek to protect consumers against unfair business practices and to promote a basic level of honesty and reliability in the marketplace; and (c) engaging in conduct that causes

a substantial injury to consumers, not outweighed by any countervailing benefits to consumers or to competition, which the consumers could not have reasonably avoided.

197. Volkswagen engaged in fraudulent business practices by engaging in conduct that was and is likely to deceive consumers acting reasonably under the circumstances.

198. As a direct and proximate result of Volkswagen's unlawful, unfair, and fraudulent business practices as alleged herein, Plaintiffs Tomassi and Lemen and California Class members suffered injury-in-fact and lost money or property, in that they purchased/leased Class Vehicles they otherwise would not have purchased/leased, and are left with Class Vehicles of diminished value and utility because of the incorporation of the defeat device. Meanwhile, Volkswagen has sold and leased more Class Vehicles than it otherwise could have and charged inflated prices for them, unjustly enriching itself thereby.

199. Plaintiffs Tomassi and Lemen and California Class members are entitled to equitable relief including restitution of all fees, disgorgement of all profits accruing to Volkswagen because of its unfair, fraudulent, and deceptive practices, attorneys' fees and costs, declaratory relief, and a permanent injunction enjoining Volkswagen from its unfair, fraudulent, and deceitful activity.

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

A. Certifying of the proposed Class and appointing Plaintiffs' counsel as Class Counsel;

B. Temporarily and permanently enjoining Volkswagen from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in the Complaint.

- C. Granting injunctive relief in the form of a recall or free replacement program;
- D. Awarding costs, restitution, damages, and disgorgement in an amount to be determined at trial;
- E. Declaring revocation of acceptance;
- F. Awarding damages under the Magnuson-Moss Warranty Act;
- G. For treble- or punitive damages as permitted by law;
- H. Ordering Volkswagen to pay both pre- and post-judgment interests on any amounts awarded;
- I. Awarding costs and attorneys' fees; and
- J. Granting all such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury as to all issues so triable.

Dated: October 5, 2015

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OLSTEIN, BRODY & AGNELLO P.C.
Attorneys for Plaintiff

By: /s/ James E. Cecchi
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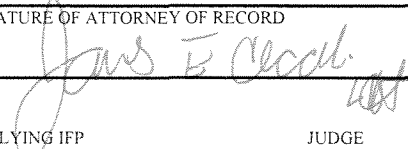
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Counsel for Plaintiffs and the Proposed Class

JS 44 (Rev. 11/04)

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Jeffrey Scolnick, Peter Tomassi and Andrew Lemen (b) County of Residence of First Listed Plaintiff <u>Middlesex</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Carella, Byrne, Cecchi, Olstein, Brody & Agnello, 5 Becker Farm Road, Roseland, New Jersey 07068		DEFENDANTS Volkswagen Group of America, Inc. County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) _____																																					
II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 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) <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;">Citizen of This State</td> <td style="width: 10%; border: none; text-align: center;">PTF</td> <td style="width: 10%; border: none; text-align: center;">DEF</td> <td style="width: 33%; border: none;">Incorporated or Principal Place of Business In This State</td> <td style="width: 10%; border: none; text-align: center;">PTF</td> <td style="width: 10%; border: none; text-align: center;">DEF</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none;"><input type="checkbox"/> 4</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business In Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)																																							
CONTRACT <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 (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		TORTS 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 PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability		FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		BANKRUPTCY <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		OTHER STATUTES <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"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes																															
V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment																																							
VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. sec 1332(d)</u> Brief description of cause: <u>This is a claim relating to non-EPA compliant vehicles</u>																																							
VII. REQUESTED IN COMPLAINT: <input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																																							
VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE <u>Linares</u> DOCKET NUMBER <u>15-6985</u>																																							
DATE 10/05/2015		SIGNATURE OF ATTORNEY OF RECORD 																																					
FOR OFFICE USE ONLY																																							
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____																																			