

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

**NICOLE M. BARNARD, individually and  
on behalf of a class of similarly situated  
individuals,**

9608 Westcott Way  
Nottingham, Maryland 21236

Plaintiffs

v.

**VOLKSWAGEN AG**

Berliner Ring 2 38440  
Wolfsburg, Lower Saxony  
Federal Republic of Germany

and

**VOLKSWAGEN GROUP  
OF AMERICA, INC.**

2200 Ferdinand Porsche Drive  
Herndon, Virginia, 20171

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

and

**AUDI AG**

Auto-Union-Str. 1  
Ingolstadt, Bayern, 85057  
Federal Republic of Germany

and

**AUDI OF AMERICA, INC.**

Corporation Trust Incorporated  
32 South Street  
Baltimore, Maryland 21202

Defendants

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

**JURY TRIAL DEMANDED**

## **CLASS ACTION COMPLAINT**

Plaintiffs, Nicole M. Barnard, by and through undersigned counsel, brings this action on her own behalf, and on behalf of a Class of persons defined below (collectively referred to as “Class Members”), who purchased or leased Volkswagen and Audi vehicles equipped with 2.0 liter TDI (Turbocharged Direct Injection) “Clean Diesel” engines that were designed, manufactured, distributed, marketed, sold and leased by Defendants, Volkswagen AG, Volkswagen Group of America, Inc., Audi AG, and Audi of America, Inc. (collectively referred to as “Volkswagen” or “Defendants”) and state as follows:

### **Summary of the Lawsuit**

1. From approximately 2008 to 2015, Volkswagen AG, Volkswagen Group of America, Inc., Audi AG, and Audi of America, Inc. directly and by and through their management, engineers, and other agents, servants, and employees, created, participated in, and aided and abetted an elaborate and successful scheme to deceive and defraud approximately 482,000 customers in the United States who purchased the following vehicles with 2.0-liter TDI (Turbocharged Direct Injection) “Clean Diesel” engines (hereinafter known as the “Class Vehicles”):

- 2010 – 2015 Audi A3 TDI;
- 2012 – 2015 Volkswagen Beetle TDI and Beetle Convertible TDI;
- 2009 – 2015 Volkswagen Jetta TDI
- 2009 – 2014 Volkswagen Jetta SportWagen TDI;
- 2010 – 2015 Volkswagen Golf TDI;
- 2015 Golf SportWagen TDI;

- 2012 – 2015 Volkswagen Passat TDI.<sup>1</sup>

2. As a result of Volkswagen's deception, the Plaintiff and Class Members purchased or leased Class Vehicles that emitted higher levels of pollutants into the air than allowed under state and federal law, in some cases as much as 40 times the allowable limits.

3. Prior to purchasing their vehicles, Plaintiff and the other Class Members did not know that their Class Vehicles had been engineered to defeat emissions testing, that their vehicles emitted pollutants beyond legal limits, or that the vehicles they purchased could not deliver on Volkswagen's dual promise of premier performance and reduced emissions. Had the Plaintiff and the Class Members known about Volkswagen's deception and the condition of the vehicles at the time the vehicles were purchased or leased, they would not have purchased or leased the Class Vehicles, or they would have paid less for them.

4. This is a Class Action suit seeking compensatory and punitive damages brought by the Plaintiff, Nicole M. Barnard, individually and on behalf of all others similarly situated, against Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen of America, Inc., and Audi of America, Inc., pursuant to Federal Rule of Civil Procedure 23 and under the authority of 28 U.S. § 1332(d).

### **The Parties**

5. Plaintiff, Nicole M. Barnard, is a resident and citizen of the State of Maryland who lives in Nottingham, Maryland. At all times relevant to this cause of action, Plaintiff Barnard owned a 2015 Volkswagen Jetta TDI SE with a TDI "Clean Diesel" engine (VIN

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<sup>1</sup> The vehicles identified in this Class Action Complaint are those known to be involved at this time. The fraudulent scheme at issue is the subject of intense public scrutiny and will be an issue in discovery. If additional vehicles are identified, Plaintiff may amend her Class Action Complaint to include them.

3VWLA7AJ7FM306982). Plaintiff Barnard purchased her Volkswagen Jetta TDI “Clean Diesel” new from Cook Volkswagen of Bel Air in Fallston, Maryland, an exclusive dealer of Volkswagen vehicles and services obtained directly from the Volkswagen Defendants. Plaintiff’s vehicle was designed, manufactured, sold, distributed, advertised, marketed, and warranted by Volkswagen.

6. At all times, Plaintiff, and all Class Members, have driven their vehicles in a foreseeable manner and in the manner in which it was intended to be used.

7. Defendant Volkswagen Aktiengesellschaft, also known as Volkswagen AG, is a foreign corporation created and existing under the laws of Germany with a principal place of business in Wolfsburg, Lower Saxony in the Federal Republic of Germany. At all relevant times, Volkswagen AG was involved in designing, engineering, manufacturing, testing, marketing, supplying, selling, importing, and distributing motor vehicles, including Class Vehicles, in Maryland and throughout the United States of America. At all times relevant to this cause of action, Defendant Volkswagen AG, directly and by and through its wholly owned subsidiaries, management, engineers, agents, servants, and employees, purposefully availed itself of the privilege of conducting business activities within the United States of America and the State of Maryland, and submitted to the judicial power of the courts in this State and throughout this country. Specifically, Defendant Volkswagen AG regularly solicited business, transacted and conducted business, engaged in a persistent course of conduct, derived substantial revenue from goods, services, and manufactured products advertised, used, contracted to supply goods, services, and manufactured products, and caused damage in the United States of America, including the State of Maryland. It targeted the United States of America, including the State of Maryland, hired agents to sell its products and services in the country and the State, marketed its products in the country and this State, and knew or should have known that its products would be sold in this

country and this State and its conduct would have effects in the country and the State. It also submitted to jurisdiction in the United States of America and the State of Maryland by placing its products into the stream of commerce, with the expectation that they would be purchased by consumers within this State.

8. Defendant Volkswagen Group of America, Inc. (“VGA”) is a corporation created and existing under the laws of the State of New Jersey with a principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. Defendant VGA is registered to do business in the State of Maryland and employs and maintains a Resident Agent located at 7 St. Paul Street in Baltimore, Maryland. At all relevant times, VGA was involved in designing, engineering, manufacturing, testing, marketing, supplying, constructing, assembling, importing, distributing, and selling motor vehicles, including Class Vehicles, in Maryland and throughout the United States of America. At all times relevant to this cause of action, Defendant VGA, directly and by and through its subsidiaries, management, engineers, and other agents, servants, and employees, purposefully availed itself of the privilege of conducting business activities within the United States of America and the State of Maryland, and submitted to the judicial power of the courts in this country and State. Specifically, Defendant VGA regularly solicited business, transacted and conducted business, engaged in a persistent course of conduct, derived substantial revenue from goods, services, and manufactured products used, contracted to supply goods, services, and manufactured products, and caused damages in the United States of America and the State of Maryland. It targeted this country and State of Maryland, hired agents to sell its products and services in the country and this State, and knew or should have known that its products would be sold in this country and this State, and that its conduct would have effects in this country and this State. It also submitted to jurisdiction in the United States of America and the State of

Maryland by placing its products into the stream of commerce with the expectation that they would be purchased by consumers within this State.

9. Defendant Audi Aktiengesellschaft, also known as Audi AG, is a foreign corporation created and existing under the laws of Germany with a principal place of business in Ingolstadt in the Federal Republic of Germany. At all relevant times, Audi AG was involved in designing, engineering, manufacturing, testing, marketing, supplying, selling, constructing, importing, and distributing motor vehicles, including Class Vehicles, in Maryland and throughout the United States of America. At all times relevant to this cause of action, Defendant Audi AG, directly and by and through its wholly owned subsidiaries, management, engineers, agents, servants, and employees, purposefully availed itself of the privilege of conducting business activities within the United States of America and the State of Maryland, and submitted to the judicial power of the courts in this State and throughout the country. Specifically, Defendant Audi AG regularly solicited business, transacted and conducted business, engaged in a persistent course of conduct, derived substantial revenue from goods, services, and manufactured products advertised, used, contracted to supply goods, services, and manufactured products, and caused damage in the United States of America, including the State of Maryland. It targeted the United States of America, including the State of Maryland, hired agents to sell its products and services in the country and the State, marketed its products in this country and this State, and knew or should have known that its products would be sold in this country and this State, and that its conduct would have effects in this country and this State. It also submitted to jurisdiction in the United States of America and the State of Maryland by placing its products into the stream of commerce with the expectation that they would be purchased by consumers within the State.

10. Defendant Audi of America, Inc. (“AA”) is a corporation created and existing under the laws of the State of New Jersey with a principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171. Defendant AA is registered to do business in the State of Maryland, and either maintains or formerly maintained a Resident Agent located at 32 South Street in Baltimore, Maryland. At all relevant times, AA was involved in designing, engineering, manufacturing, testing, marketing, supplying, constructing, assembling, importing, distributing, and selling motor vehicles, including Class Vehicles, in Maryland and throughout the United States of America. At all times relevant to this cause of action, Defendant AA, directly and by and through its subsidiaries, management, engineers, and other agents, servants, and employees, purposefully availed itself of the privilege of conducting business activities within the United States of America and the State of Maryland, and submitted to the judicial power of the courts in this country and State. Specifically, Defendant AA regularly solicited business, transacted and conducted business, engaged in a persistent course of conduct, derived substantial revenue from goods, services, and manufactured products used, contracted to supply goods, services, and manufactured products, and caused damages in the United States of America and the State of Maryland. It targeted the country and State of Maryland, hired agents to sell its products and services in this country and this State, and knew or should have known that its products would be sold in this country and this State, and that its conduct would have effects in this country and this State. It also submitted to jurisdiction in the United States of America and the State of Maryland by placing its products into the stream of commerce with the expectation that they would be purchased by consumers within the State.

11. Defendant Volkswagen AG is the parent corporation of Defendants VGA, Audi AG, and AA, which are wholly-owned subsidiaries of Volkswagen AG. Defendants Volkswagen

AG, Volkswagen Group of America, Inc., Audi AG, and Audi of America, Inc. designed, manufactured, imported, and sold the Class Vehicles, and the Defendants, directly and in combination, created, participated in, and aided and abetted the elaborate fraudulent scheme set forth in this Class Action Complaint.

### **Jurisdiction and Venue**

12. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) and (d) because the amount in controversy for the Class exceeds \$5,000,000, and the Plaintiff and other putative Class Members are citizens of a different state than the Volkswagen Defendants.

13. Members of the proposed Class are citizens of states different than the home states of the Defendants.

14. This Court has personal jurisdiction over the Volkswagen Defendants because they, individually and collectively, purposefully availed themselves of the privilege of conducting business activities within the United States of America, including in the State of Maryland, and submitted to the judicial power of the courts in this State by regularly marketing, soliciting business, transacting and conducting business, engaging in a persistent course of conduct, deriving substantial revenue from goods, services, and manufactured products used, contracting to supply goods, services, and manufactured products, and causing damages here. The Volkswagen Defendants also purposefully availed themselves of the privilege of conducting business activities within the United States of America and the State of Maryland, and submitted to the judicial power of the courts in this State by targeting the State of Maryland and hiring agents to sell its products and services here. In so doing, the Volkswagen Defendants knew or should have known that their products would be sold in the State of Maryland, and that their conduct would have effects in this State. They further submitted to jurisdiction in the State of Maryland by placing their products into



the stream of commerce with the expectation that they would be purchased by consumers within the State.

15. Volkswagen, through its business of distributing, selling, and leasing the Class Vehicles in the United States of America and in the State of Maryland, have established sufficient contacts in this district such that personal jurisdiction and venue are appropriate. Pursuant to 28 U.S.C. § 1391, Volkswagen Defendants regularly sell vehicles and services here through exclusive dealerships, and they solicit business here through television and radio advertising, billboards, brochures, and other marketing methods, and thus they are deemed to reside here for venue purposes.

### **Factual Allegations**

#### **Emissions Standards in Maryland and Under the EPA**

16. The Clean Air Act (“CAA”), and its implementing regulations, were enacted in response to a U.S. Congressional finding that “the increasing use of motor vehicles ... has resulted in mounting dangers to the public health and welfare.” 42 U.S.C. § 7401(a)(2). The purpose behind its enactment was clear: “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).

17. Pursuant to the CAA, The United States Environmental Protection Agency (“EPA”) is charged with regulating vehicle emissions standards in this country.

18. The CAA, its Amendments of 1990, and its implementing regulations set forth two tiers of emissions standards applicable to automobiles in the U.S.: Tier 1 was adopted in 1991 and phased in from 1994 to 1997, while Tier II standards were phased in from 2004 to 2009.

19. Within the Tier II standards, there are subgroups designated Bins 1 through 11, with Bin 1 governing the cleanest vehicles (*i.e.*, zero emission vehicles) and Bin 11 governing the most polluting vehicles. Bin 5 sets forth the standards applicable to automobiles and light trucks, the category into which the Class Vehicles fall. The Tier II, Bin 5 standards specifically restrict emissions of carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), particulate matter (PM), formaldehyde (HCHO), and non-methane organic gases (NMOG) or non-methane hydrocarbons (NMHC).

20. In addition to the two Tiers of emissions standards, the EPA has also developed consumer ratings, which are reflected by an “air pollution score” that takes into account the amount of health-damaging and smog-forming airborne pollutants a vehicle emits. The score ranges from zero (the most pollution) to 10 (the least). The EPA also developed a “greenhouse gas score” that takes into account the amount of greenhouse gases a vehicle will produce over its lifetime, based on typical consumer usage, from zero (most gases) to ten (fewest). One of the factors considered in determining a vehicle’s “air pollution score” is the amount of nitrous oxide emitted from the vehicle. The main factor in determining a vehicle’s “greenhouse gas score” is the amount of carbon dioxide emissions from the tailpipe.

21. State and local governments may apply for waivers through the EPA to enact stricter vehicle emissions standards than those required by the EPA. Maryland, for example, has adopted stricter standards. On November 19, 2007, Maryland adopted the Maryland Clean Cars Program, which borrows from California’s strict vehicle emissions standards and applies to vehicles in model years 2011 forward.

22. Continuing this trend, Maryland again followed California's lead in 2012 when it adopted the even stricter "Cal LEV III" ("California Low Emissions Vehicle") tailpipe and greenhouse gas standards, regulatory standards that apply to model years 2015 and beyond.

23. Other states that have chosen to adopt stricter standards include Arizona, Connecticut, the District of Columbia, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

24. The EPA also administers a certification program, which requires that all vehicles obtain a "certificate of conformity" to ensure that every vehicle introduced into the U.S. stream of commerce satisfies the mandatory emission standards.

25. To obtain a "certificate of conformity," a vehicle manufacturer must submit an application to the EPA for each group of vehicles that it intends to put into the stream of commerce in the United States. Among the items required to be included in the application is a list of all auxiliary emission control devices ("AECDs") installed on the vehicle. *See* 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. If an AECD is included in any vehicle, the application must also include "a justification of 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" the device is not an improper attempt to disguise emissions or defeat emissions testing. 40 C.F.R. § 86.1844-01(d)(11).

26. Motor vehicles equipped with "defeat devices" are not in compliance with EPA regulations, and are not entitled to receive certificates of compliance. *See* 40 C.F.R. §§ 86.1809-

01; 86-1809-10; 86-1809-12. A “defeat device” is defined by applicable regulations as 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; and 3) The AECD does not go beyond the requirements of engine starting; or 4) The AECD applies only for emergency 28 vehicles....” 40 C.F.R. § 86.1803-01.

27. Additionally, vehicles may be “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). This is made clear to automobile manufacturers, including Volkswagen, in the certificates of conformity themselves, which state that the “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 its certificate of compliance.

28. It is a violation of the CAA “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.” 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii).

29. Manufacturers are similarly prohibited from selling, offering for sale, introducing into the stream of commerce, delivering for introduction into the stream of commerce, or

importing, any new motor vehicle unless that vehicle is covered by a certificate of compliance issued by the EPA. 42 U.S.C. § 7522(a)(1); 40 C.F.R. § 86.1854-12(a)(1).

***Volkswagen's TDI "Clean Diesel" Products***

30. In the late 1990s, while most automakers were investing heavily in the development of complex hybrid electric vehicles, Volkswagen announced that it would take a different route. Although diesel-engine vehicles were popular in Europe, they only comprised approximately five percent of the United States car market as of 2007. In 2008, Volkswagen introduced a 10-year plan to more than triple its annual sales in the United States and made diesel-engines a centerpiece of its U.S. growth campaign.

31. Volkswagen introduced its 2.0 Liter TDI CR engine in 2008 and touted its own engineering prowess in the process, describing the engine as, "the first of a new generation of dynamic and efficient diesel engines from Volkswagen." See "Self Study Program 826803: 2.0 Liter TDI Common Rail Bin 5 ULEV Engine," Volkswagen of America, Inc. 2008. TDI stands for "Turbocharged Direct Injection," referring to the fact that the engines are turbocharged and use fuel injectors to directly inject fuel into each cylinder. Fuel injectors atomize fuel through a small nozzle under high pressure. "CR" stands for the term "Common Rail," referring to the shared fuel high-pressure accumulator for all injectors in a cylinder bank.

32. Volkswagen repeatedly congratulated itself for developing "Clean Diesel" engines that combined fuel economy, power, and cleanliness. In its own publications, Volkswagen explained that, "[t]he superior qualities of the 2.0L TDI engine with common rail injection systems are oriented towards future challenges in acoustics, comfort, and exhaust gas after-treatment ... confirming Volkswagen's role as a pioneer in diesel technology. The engine offers the potential for future improvements in exhaust gas standards and the associated technologies." See "Self

Study Program 826803: 2.0 Liter TDI Common Rail Bin5 ULEV Engine,” copyright 2008 Volkswagen of America, Inc.

33. Volkswagen publicized that, “equipped with a special after-treatment system, this engine meets current emissions standards.” *Id.* The “after-treatment system” referred to a diesel particulate filter with upstream oxidation catalyst and low and high pressure Exhaust Gas Recirculation (“EGR”) system designed to reduce nitrous oxide emissions. According to Volkswagen’s representations, the 2.0L TDI engine met Tier II, Bin 5 emissions requirements. *Id.*

34. Volkswagen’s primary selling point of the TDI Clean Diesel engines was its combination of power, fuel economy, and reduced emissions that it claimed met emissions standards throughout the United States. In an October 2009 interview with *Business Insider*, when asked “[w]hat is the advantage of a diesel over a hybrid,” Volkswagen Group of America’s chief operating officer, Mark Barnes, explained:

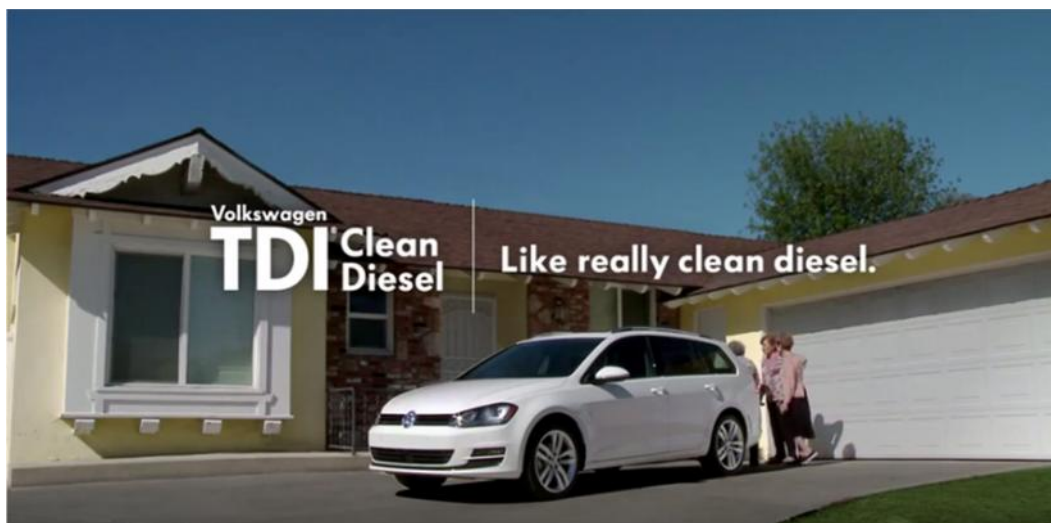
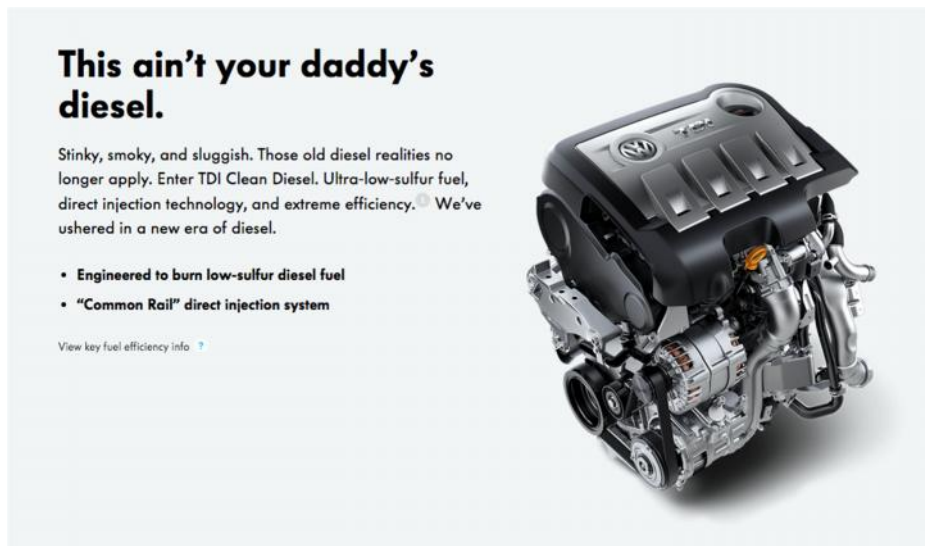
It’s a fantastic power train. It gives very good fuel economy. It’s also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would. And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous oxide are cut by 95%. So, a very very clean running engine. Clean enough to be certified in all 50 states.

Gayathri Vaidyanathan, “Volkswagen Preps for a Diesel Revolution,” *Business Insider*, Oct. 2009; available at <http://www.businessinsider.com/volkswagen-preps-for-a-diesel-revolution-2009-10> (last visited October 6, 2015).

35. In that same interview, when asked “how do you re-brand something that’s dirty like diesel as something that’s green,” Barnes said:

The way we've gone about it is through a number of communication pieces. One of them we've used is TDI Truth & Dare. It is a very good website that compares some older diesels versus the current TDI clean diesel. And one of the things we do is we put coffee filters over the exhaust pipes of both cars. We let them run for five minutes and after they are done, we take them off and the older diesel product (not a VW diesel) has a round sooty spot on that coffee filter. Ours is very clean. In fact they actually make coffee out of the filter that was attached to the Volkswagen clean diesel tail pipe and they drink it. *Id.*

36. Volkswagen extensively advertised its allegedly "clean" diesel technology in print, television, and online advertisements. Examples of print advertising touting the "Clean Diesel" technology as environmentally friendly and "clean," include the following:



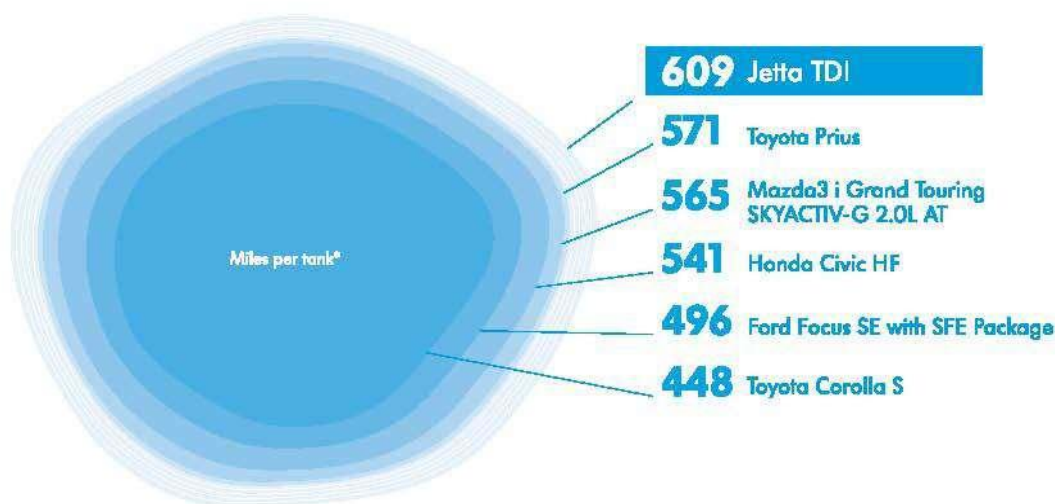
37. In August 2013, Volkswagen announced the introduction of the 2.0-liter EA288 TDI engine, which replaced the 2.0L TDI in North American cars beginning with model year 2015. The engine was specifically redesigned to offer more power, better fuel efficiency, and up to forty percent fewer emissions. In a press release, it claimed that “[a] number of changes have been made to help reduce emissions, such as: use of a complex exhaust gas recirculation system (with high pressure EGR and a cooled low-pressure EGR); integration of the water-cooled intercooler and the EGR valve with the intake manifold, which also improves throttle response; and packaging the exhaust after-treatment components close to the engine by combining the DPF with the [Selective Catalytic Reduction] Catalyst.” *See* Press Release, “Volkswagen Group of America Underlines Diesel Strategy With New Engine Line,” Aug. 6, 2013.

38. Volkswagen continued its media blitz in an attempt to capture more of the U.S. car market. In addition to print and television advertisements, Volkswagen also released multiple videos online and through social media touting the cleanliness of its “Clean Diesel” engines. One of these advertisements, a screenshot of which is shown below, seeks to debunk “old wives tales” and show that Volkswagen’s “Clean Diesel” engines are fast, quiet, and clean. *See* Don Klein, “VW’s Hilarious New TDI Diesel Ads Return Excellent Viral Mileage,” Car & Driver Blog, Mar. 13, 2015; available at <http://blog.caranddriver.com/vws-hilarious-new-tdi-diesel-ads-return-excellent-viral-mileage/> (last visited October 6, 2015).





39. These advertisements, and others like them, were designed to promote the fuel efficiency of the “Clean Diesel” cars, all the while promising that the vehicles were, in fact, “cleaner” than other vehicles in the marketplace. For example, in a marketing brochure for the 2013 VW Jetta TDI Clean Diesel, Volkswagen claimed that the car was “90% cleaner than previous diesel engines” and would go farther on a single tank of gas than did the Toyota Prius, Mazda 3, Honda Civic HF, Ford Focus SE, and Toyota Corolla S:



## More adventurous.

The very thought that the Jetta TDI can drive up to 609 miles on one tank is impressive all by itself.\*\* But the fact that it's exceptionally fun to drive with its 236 lbs/ft of torque and turbocharged clean diesel engine is worth writing home about. Which is something you can do when you take it on long drives to faraway places. Like from Los Angeles to Napa Valley in time to hit the wineries when you get there. Or from Maryland to Maine, sampling every crab cake and lobster roll along the way. The fact that it's 90% cleaner than previous diesel engines might encourage you to get up and go more often than you expect, however. Your Jetta encourages spontaneity.

\*Comparisons based on manufacturers' published data. 2012 2.0L Jetta TDI Clean Diesel, DSG automatic transmission: 30 city/42 highway mpg. Range based on 42 highway mpg EPA estimate and a 14.5-gallon tank. 2012 1.8L Toyota Prius, V6 automatic transmission: 51 city/48 highway mpg. Range based on 48 highway mpg EPA estimate and an 11.8-gallon tank. 2012 2.0L Mazda3 i Grand Touring with SKYACTIV-G, automatic transmission: 28 city/38 highway mpg. Range based on 38 highway mpg EPA estimate and a 14.5-gallon tank. 2012 1.8L Honda Civic HF, automatic transmission: 29 city/41 highway mpg. Range based on 41 highway mpg EPA estimate and a 12.4-gallon tank. 2012 2.0L Ford Focus SE with SFE Package, automatic transmission: 28 city/40 highway mpg. Range based on 40 highway mpg EPA estimate and a 12.4-gallon tank. 2012 1.8L Toyota Corolla, automatic transmission: 27 city/34 highway mpg. Range based on 34 highway mpg EPA estimate and a 13.2-gallon tank. All fuel values are EPA estimates. Your mileage will vary. \*\*Range based on 42 highway mpg EPA estimate and a 14.5-gallon tank. Your mileage will vary.

**TDI**

**Jetta TDI Clean Diesel**

40. The advertisements touting the “clean” benefits of TDI engine technology was not limited to Volkswagen models. Audi, which utilized TDI “Clean Diesel” technology in its Audi A3 TDI model, similarly publicized reduced emissions. Audi has consistently held itself out as a trustworthy and reliable manufacturer of quality products, demonstrated, for example, through its logo below and its motto of “truth in engineering:”



41. In another advertisement, Audi, like its parent Volkswagen, advertised that its 2.0L TDI “clean diesel” engine “delivers exceptional power and performance, complemented by impressive EPA-estimated 30 MPG city and 42 MPG highway ratings.” Shown below, Audi touted its engine as “producing 30 percent fewer CO2 emissions than a comparable gasoline engine” and that its “clean diesel” engine “meets or exceeds the 50 state emissions requirements:”

## A3 engines

Select your engine to locate



### 2.0T

The award-winning 2.0 TFSI engine provides 200 hp and 207 lb-ft of torque and combines Audi's valvetronic system, variable valve timing and TFSI® direct injection for increased power and efficiency. The Audi 2.0 TFSI® has been the engine of choice for more than 1.5 million Audi drivers worldwide and is one of the most awarded engines of the last decade.

**2.0 TFSI® Specs**

Horsepower: 200 hp @ 5100 rpm		
Torque: 207 lb-ft @ 1500 rpm		
Manual	S Trans.®	S Trans.®
0-60 mph: 7.1 sec.	6.9 sec.	6.2 sec.
Fuel Estimates: 21/33 mpg	22/31 mpg	23/30 mpg



### 2.0 TDI

With the potent combination of direct diesel injection and turbocharging, the 2.0 liter TDI® clean diesel engine delivers exceptional power and performance, complemented by impressive EPA-estimated 30 MPG city and 42 MPG highway ratings\*. Producing 30 percent fewer CO2 emissions than a comparable gasoline engine, the 2.0 TDI® clean diesel also meets or exceeds the 50 state emissions requirements.

**2.0 TDI® Specs**

Horsepower: 140 hp @ 4200 rpm	
Torque: 236 lb-ft @ 1750 rpm	
0-60 MPH: 8.9 sec.	
Fuel Estimates: 30/42 MPG	

42. Volkswagen's "Clean Diesel" marketing campaign was a success. Sales of "Clean Diesel" vehicles rose to more than 100,000 units in 2013, constituting a 78% share of the North American diesel automobile market, and more diesel cars in the United States than every other brand combined.

43. Volkswagen charged buyers a premium of between \$1,000 and \$6,855 to purchase its cutting-edge "Clean Diesel" cars.

44. While Volkswagen continued to design and manufacture more and more "Clean Diesel" cars, including 2016 models, it remained unaware that its deceptive scheme to cheat EPA emissions tests would soon be revealed to the world.

45. In early 2014, the EPA learned that researchers for West Virginia University's Center for Alternative Fuels, Engines and Emissions had discovered that, when driven on the road, a 2012 Volkswagen Jetta and a 2013 Volkswagen Passat (both 2.0L TDI "Clean Diesel" models) exceeded the EPA Tier 2, Bin 5 standards by factors of 15 to 25 and 5 to 20, respectively, even though emissions for the same two vehicles were below the EPA Tier 2, Bin 5 standards during the chassis dynamometer testing widely used across this country to test emissions compliance. The EPA opened an investigation, approached Volkswagen with the results of the research, and asked for an explanation.

46. Over the course of the next year, Volkswagen initiated its own testing in order to explain the reason why its vehicles performed differently when tested on the road compared to during standard chassis dynamometer emissions testing. Volkswagen continued to stand by its products and maintained their compliance with emissions standards.

47. In December of 2014, Volkswagen announced that it would conduct a voluntary recall of approximately 500,000 vehicles to recalibrate software in order to fix the real world driving emissions problem discovered during the WVU testing.

48. The EPA agreed to the recall, but cautioned that it would perform its own confirmatory testing to ensure that Volkswagen's recall adequately addressed the problem. The California Air Resources Board ("CARB") coordinated with the EPA to conduct the confirmatory testing. CARB's testing revealed that although the proposed recall recalibration reduced on-the-road emissions to some degree, the vehicles' nitrous oxide emissions still remained significantly higher than expected.

49. CARB shared its findings with the EPA and Volkswagen on July 8, 2015. The EPA and CARB concluded that none of the potential technical issues suggested by Volkswagen explained the consistently higher emissions confirmed during CARB's testing.

50. When Volkswagen was unable to explain why the TDI "Clean Diesel" engines continued to emit nitrogen oxides in excess of the EPA's Tier 2, Bin 5 standards, the EPA stated that it would not issue certificates of conformity for Volkswagen's 2016 model year diesel vehicles until it could explain the anomalous emissions and ensure that the 2016 model year vehicles would not have similar issues.

51. Only when confronted with this ultimatum did Volkswagen finally admit to the EPA that, from 2009 through 2015, it had designed, manufactured, and installed a "defeat device" on many of its "Clean Diesel" products for the purpose of bypassing, defeating, or rendering inoperative elements of its those vehicles' emissions control system.

52. Volkswagen's "defeat device" consisted of software installed in the engine control module ("ECM") that was designed to sense when the vehicle was being tested for compliance

with EPA emissions standards. This “switch,” as the EPA called it, was triggered by various inputs, including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure. These inputs directly tracked the federal test procedures used for EPA emissions certification testing. When the software detected that an EPA emissions test was being conducted, the ECM threw a “switch” that produced compliant emission results under an ECM calibration that Volkswagen referred to as the “dyno calibration” (referring to the chassis dynamometer used in emissions testing). At all other times during normal vehicle operation, the “switch” caused the ECM to run software that ran a separate “road calibration,” which diminished the effectiveness of the emission control system, resulting in nitrous oxide emissions of 10 to 40 times more than EPA permissible levels when the vehicle was being operated on the road.

53. As a result of the EPA and CARB’s investigations, and Volkswagen’s admissions, both the EPA and CARB issued Notices of Violation to Volkswagen AG, Volkswagen Group of America, Inc., and Audi AG finding that it violated the Clean Air Act, 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 (the designated) test groups.” Additionally, the EPA found that the Volkswagen and Audi entities violated 42 U.S.C. § 7522(a)(3)(B) each time it manufactured and installed into one of its vehicles an ECM equipped with a “defeat device.” *See* Exhibit 1 (Notice of Violation Issued to Mr. Geanacopoulos and Stuart Johnson of Volkswagen Group of America, Inc. by the U.S. Environmental Protection Agency, dated Sept. 18, 2015).

54. The EPA found that “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 emissions standards. ...VW’s ‘road calibration’ and ‘switch’ are

AECDs that were neither described nor justified in the applicable [certificate of conformity] applications, and are illegal defeat devices.” *Id.*

55. The Notices of Violation applied the following vehicles equipped with the 2.0L TDI “Clean Diesel” engines (referred to as the “Class Vehicles”):

<b>Model Year</b>	<b>Make and Model(s)</b>
2009	VW Jetta, VW Jetta Sportwagen
2010	VW Jetta, VW Jetta Sportwagen
2011	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
2013	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
2014	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat
2015	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Jetta Sportwagen, Audi A3, VW Passat

56. When news of the “defeat devices” broke in the U.S., the C.E.O. of Volkswagen AG, Martin Winterkorn, apologized to the public, saying in a statement, “I, personally, am deeply sorry that we have broken the trust of our customers and the public” and that the company “will not tolerate violations of any kind of our internal rules or of the law.” As of approximately September 21, 2015, Volkswagen issued a “stop-sale order” to its dealers for all 2.0 liter TDI “Clean Diesel” engines.

57. As of the date of this Class Action Complaint, Volkswagen has not announced whether, and how, the Class Members vehicles will be altered or repaired to make them compliant with EPA, Maryland and other states’ emissions standards. Upon information and belief,

Volkswagen will not be able to implement such a fix without detracting from the Class Vehicles' performance, fuel efficiency, and value.

**Plaintiff's Purchase of a "Clean Diesel" Volkswagen Jetta**

58. In May of 2015, Plaintiff Nicole M. Barnard purchased a 2015 TDI SE "Clean Diesel" Jetta from Cook Volkswagen in Fallston, Maryland (trading in a 2012 non-diesel Jetta at the time of purchase). She financed her vehicle in part through her trade-in and in part through a loan secured with Volkswagen Credit.

59. Plaintiff conducted research prior to deciding to purchase the Jetta TDI "Clean Diesel." She had previously owned a Volkswagen Jetta and considered herself a loyal Volkswagen customer. Relying on her past observations of Volkswagen advertisements and marketing materials and statements by her Volkswagen dealer that the TDI "Clean Diesel" was one of the most environmentally clean engines available in the market, Plaintiff Barnard purchased her TDI "Clean Diesel" Jetta.

60. At no time prior to or after Plaintiff's purchase of the 2015 Volkswagen Jetta TDI "Clean Diesel" did Volkswagen, or any of its agents or employees, inform her that the vehicle had been designed and manufactured with a "defeat device" that caused it to emit up to 40 times the quantity of nitrous oxide allowed by federal clean air standards when operated under normal driving conditions.

61. If she had been informed that the 2015 Volkswagen Jetta TDI "Clean Diesel" was equipped with a "defeat device" that caused it to emit up to 40 times the amount of nitrous oxide permitted by the federal clean air standards, Plaintiff Barnard would not have purchased the vehicle or would have paid less for it.

**Tolling of the Statute of Limitations**

62. Any statute of limitations applicable to Plaintiff Barnard and the other Class members has been tolled by Volkswagen's knowledge, active concealment, and denial of the facts alleged herein. As a result of Volkswagen's deceit and fraud, which deceived even the United States Government, Plaintiff and proposed Class Members could not have, even with the exercise of ordinary and reasonable diligence, discovered the true, defective nature of their Class Vehicles until the days and weeks before this suit was filed. This suit was timely brought after Plaintiff, and the public at large, first learned of the operative facts giving rise to this cause of action.

63. In addition, Volkswagen is estopped from relying on any statute of limitation because of their intentional concealment of the defective nature of the Class Vehicles and their engines.

**Class Action Allegations**

64. Plaintiff brings this action as a Class Action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) and this action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those Rules.

65. The Class and state-specific Sub-Class are defined as follows:

Class: All persons or entities in the United States who are current or former owners or lessees of the Volkswagen or Audi vehicles equipped with a 2.0L TDI "Clean Diesel" engine and set forth above as "Class Vehicles" (the "Nationwide Class").

Maryland Sub-Class: All Members of the Nationwide Class who reside in the State of Maryland.

66. Excluded from the Class and Sub-Class are (1) Defendants, any entity or division in which Defendants have a controlling interest, their employees, coconspirators, officers,



directors, legal representatives, heirs, successors and wholly or partly own subsidiaries or affiliated companies; (2) Class counsel and their employees; (3) the judicial officers and their immediate family members and associated court staff assigned to this case, and (4) all persons within the third degree of relationship to any such persons.

67. Certification of Plaintiff's claims for Class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a Class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

68. Numerosity of the Class (Fed. R. Civ. P. 23(a)(1)): The exact number of Class Members is uncertain and can only be ascertained through discovery. Nevertheless, the members of the Class are so numerous that their individual joinder is impracticable. Upon information and belief, the number of Class Members numbers in the hundreds of thousands. Disposition of the claims of Class Members in a single action will provide substantial benefits to all parties and the Court. The Class Members will be readily identifiable from information and records in the Defendants' possession, custody, or control, and through the media. Class Members can be notified of the pending action by e-mail, mail and supplemented by published notice, as necessary.

69. Commonality and Predominance (Fed. R. Civ. P. 23(a)(2)): There are numerous questions of law and fact common to the Plaintiff and the Class. These questions predominate over any questions affecting only individual class members. These common legal and factual issues include, but are not limited to:

- a. Whether Defendants engaged in the conduct alleged herein;
- b. Whether Defendants designed, advertised, marketed, distributed, leased, sold, or otherwise placed Class Vehicles into the stream of commerce in the United States;

- c. Whether Defendants designed, manufactured, marketed, distributed, leased, sold or otherwise placed Class Vehicles into the stream of commerce in the United States knowing that the Class vehicles did not comply with applicable federal and state emissions standards;
- d. Whether Defendants designed and manufactured the Class Vehicles with a defeat device;
- e. Whether Defendants designed and manufactured the Class Vehicles with a defeat device for the purpose of circumventing federal and state emissions requirements in order to represent that the Class Vehicles had greater performance and fuel economy characteristics than could otherwise have been achieved if in compliance with such emissions standards;
- f. Whether Defendant knew or should have known that the defeat device violated the Clean Air Act;
- g. Whether Defendants intentionally concealed from consumers that the Class Vehicles did not comply with federal and state emissions standards;
- h. Whether Defendants misrepresented to purchasers and lessees of the Class Vehicles that such vehicles were in compliance with federal and state emissions standards;
- i. Whether Defendants breached the express terms of its contracts with purchasers and lessees when it included a defeat device in the ECM of the Class Vehicles;
- j. Whether Defendants breached the covenant of good faith and fair dealing by including a defeat device in the ECM of the Class Vehicles;

- k. Whether Defendants willfully concealed from purchasers and lessees of the Class Vehicles that it designed and manufactured an illegal defeat device in the Class Vehicles;
- l. Whether Defendants violated the consumer protection statutes of Maryland when it sold Class Vehicles to Class Members that were not as advertised and could not meet national or state emissions standards;
- m. Whether the fact that the Class Vehicles do not meet national or state emissions standards would be considered material by a reasonable consumer;
- n. Whether Plaintiff and the other Class members overpaid for their Class Vehicles as a result of the defects alleged herein;
- o. Whether Plaintiff and the other Class members have been harmed by a diminution in value as a result of the defects alleged herein;
- p. Whether Defendants were unjustly enriched by their deceptive practices.

70. Typicality (Fed. R. Civ. P. 23(a)(3)): The claims of the representative Plaintiff are typical of the claims of each Class Member. Plaintiff, like all other members of the Class, has sustained damages arising from Defendants' tortious and illegal conduct, as alleged herein. The representative Plaintiff and the Class Members were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of misconduct engaged in by Defendants. The factual bases of Volkswagen's misconduct is common to all Class Members and was carried out in the same way as to all Class Members.

71. Adequacy (Fed. R. Civ. P. 23(a)(4)): The representative Plaintiff will fairly and adequately represent and protect the interests of the Class members. Plaintiff has retained attorneys who are experienced and competent trial lawyers in complex litigation with experience

prosecuting class action litigation. There are no material conflicts between the claims of the representative Plaintiff and the members of the Class that would make class certification inappropriate. Counsel for the Class will zealously prosecute the claims of all Class members.

72. Superiority (Fed. R. Civ. P. 23(b)(3)): This suit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because questions of law and fact common to the Class predominate over the questions affecting only individual members of the Class, and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual class members are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendants' conduct. Further, it would be virtually impossible for the members of the Class to individually redress effectively the wrongs done to them. The cost of such individual litigation alone would likely exceed the recoverable damages. Moreover, even if Class Members themselves could afford such individual litigation, the court system could not. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from complex legal and factual issues of the case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits; and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

73. The Class Plaintiff contemplates the eventual issuance of notice to the proposed Class members setting forth the subject and nature of the instant action. Upon information and belief, Defendants' own business records and electronic media can be utilized for the contemplated

notice. To the extent that any further notices may be required, the Class Plaintiff would contemplate the use of additional media, mailings, and electronic communications.

74. This action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

- a. Without class certification and determination of statutory, factual, and legal questions within the class format, prosecution of separate actions by individual members of the Class will create the risk of:
  - i. Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class; or
  - ii. Adjudication with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- b. Common questions of law and fact exist as to the members of the Class and predominate over any questions affecting only individual members, and a Class Action is superior to other available methods of the fair and efficient adjudication of the controversy, including consideration of:
  - i. The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
  - ii. The extent and nature of any litigation concerning controversy already commenced by or against members of the Class;

- iii. The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- iv. The difficulties likely to be encountered in the management of a Class Action.

**COUNT I**  
**VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT**  
**(MARYLAND CODE, COMMERCIAL LAW § 13-101 *et seq.*)**

- 75. Plaintiff adopts the preceding paragraphs and incorporates them by reference.
- 76. This claim is brought on behalf of the Maryland Sub-Class.
- 77. Plaintiff, and other members of the Maryland Sub-Class, are “consumers” within the meaning of the Maryland Consumer Protection Act, Md. Code, Commercial Law § 13-101(c).
- 78. Defendants are “persons” within the meaning of the Maryland Consumer Protection Act, Md. Code, Comm. Law § 13-101(h).
- 79. The Class Vehicles purchased by Plaintiff, and by other members of the Maryland Sub-Class, are “consumer goods” within the meaning of the Maryland Consumer Protection Act, Md. Code, Comm. Law § 13-101(d).
- 80. The Maryland Consumer Protection Act provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md. Code, Comm. Law § 13-303. Volkswagen, as an institution and through its employees, agents, apparent agents, borrowed servants and subsidiaries, violated this prohibition in the following ways:
  - a. By making false and misleading oral and written statements regarding the Class Vehicles;

- b. By making false and misleading visual descriptions and other representations (in advertising materials and otherwise) that had the capacity, tendency, and effect of deceiving and misleading consumers;
  - c. By making representations that the Class Vehicles have characteristics, uses, benefits, and qualities that they do not in fact have;
  - d. Representing that the Class Vehicles are of a particular standard, quality, grade, style or model when they in fact were not;
  - e. Failing to state material facts with the intent of deception;
  - f. Advertising the Class Vehicles without the intent to sell them as advertised or offered;
  - g. Making false or misleading representations of fact concerning the Class Vehicles' price in comparison to prices of competitors, and to Volkswagen's own price for other comparable products;
  - h. Willfully failing to disclose and actively concealing that the "Clean Diesel" engine system was non-EPA compliant;
  - i. Willfully failing to disclose and actively concealing that the Class Vehicles emit pollutants at rates that exceed U.S and State regulations;
  - j. Purposefully installing a "defeat device" in order to cheat emissions testing;
  - k. Otherwise engaging in conduct that is unfair or deceptive, and that is likely to deceive, with the intent of deceiving.
81. Volkswagen's actions set forth above occurred in the conduct of trade or commerce.

82. Plaintiff, and the other members of the Maryland Sub-Class, have a right to bring an action under Maryland Code, Commercial Law, § 13-408, for damages sustained as a result of Volkswagen's violation of the Maryland Consumer Protection Act as set forth above.

83. As a direct and proximate result of Volkswagen's violations of the Maryland Consumer Protection Act, Plaintiff and the other members of the Maryland Sub-Class have suffered actual damages, including but not limited to, paying a premium for "Clean Diesel" technology; paying for expensive diesel gasoline; suffering a diminution in value of their vehicle; knowledge that they have been driving, and must continue to drive, a vehicle that is polluting the environment in a way they specifically intended to avoid when they purchased the vehicle; being unable to complete trade-in transactions or sales that were in progress at the time news of Volkswagen's conduct broke; incurring loans they would not have otherwise incurred; incurring attorneys' fees and costs; and other losses and damages to be determined before trial.

**COUNT II**  
**FRAUD BY DECEIT OR MISREPRESENTATION**

84. Plaintiff adopts all of the preceding paragraphs and incorporates them by reference.

85. Plaintiff brings this Count on behalf of the Nationwide Class and the Maryland Sub-Class.

86. In an effort to coerce and secure the business of the Plaintiff, and the members of the Nationwide Class and the Maryland Sub-Class, Volkswagen, as an institution and through its agents, servants, employees, borrowed servants, and subsidiaries, made numerous false representations of material fact that were designed intentionally to mislead, including but not limited to, informing the Plaintiff, and the members of the Nationwide Class and the Maryland Sub-Class, that their vehicles were EPA-compliant, and that they met federal and state emissions standards. Volkswagen knew that it could not obtain certificates of conformity or sell the Class



Vehicles without asserting their EPA-compliance and their ability to pass federal and state emissions testing requirements.

87. Volkswagen, as an institution and through its agents, servants, employees, borrowed servants, and subsidiaries, knew at the time it made these representations that the representations were false, or, at the very least, made the representations with such reckless indifference to their truth that it would be reasonable to charge Volkswagen with knowledge of their falsity.

88. Volkswagen, as an institution and through its agents, servants, employees, borrowed servants, and subsidiaries, knew at the time it made these representations that a reasonable person in the Plaintiff's position would or was likely to rely on them. In fact, Volkswagen intended for the Plaintiff, and for members of the Nationwide Class and Maryland Sub-Class, to act in reliance on its false representations of material fact. Volkswagen knew that Plaintiff, and members of the Nationwide Class and Maryland Sub-Class, would have no way of knowing the falsity of the statements and representations of Volkswagen concerning the EPA-compliance and compliance with federal and state emissions testing requirements of the Class Vehicles.

89. The Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, did in fact justifiably and reasonably rely on Volkswagen's false representations of material fact in making the decision to purchase one of the Class Vehicles. Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, would not have purchased their Class Vehicles if they had known that the vehicles were not EPA-compliant, or would not pass federal or state emissions requirements, or they would not have purchased the vehicles for the price they did.

90. As a direct and proximate result of Volkswagen's fraud by deceit and misrepresentation, Plaintiff and the other members of the National Class and Maryland Sub-Class have suffered actual damages, including but not limited to, paying a premium for "Clean Diesel" technology; paying for expensive diesel gasoline; suffering a diminution in value of their vehicle; knowledge that they have been driving, and must continue to drive, a vehicle that is polluting the environment in a way they specifically intended to avoid when they purchased the vehicle; being unable to complete trade-in transactions or sales that were in progress at the time news of Volkswagen's conduct broke; incurring loans they would not have otherwise incurred; incurring attorneys' fees and costs; and other losses and damages to be determined before trial.

**COUNT III**  
**FRAUDULENT CONCEALMENT**

91. Plaintiff adopts all of the preceding paragraphs and incorporates them by reference.

92. This claim is brought on behalf of Plaintiff and the Nationwide Class and the Maryland Sub-Class.

93. Volkswagen, as an institution and by and through its agents, servants, employees, borrowed servants, and subsidiaries, intentionally concealed from the Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, material facts that it had a duty to disclose, including but not limited to, disclosure that the "Clean Diesel" vehicles it was selling – at a premium price – were not EPA-compliant, and would not pass federal and state emissions testing requirements.

94. By intentionally concealing these material facts, and others, Volkswagen, as an institution and through its agents, servants, employees, borrowed servants, and subsidiaries, intended to defraud or deceive the Plaintiff and the members of the Nationwide Class and Maryland Sub-Class. Volkswagen knew that Plaintiff, and members of the Nationwide Class and

Maryland Sub-Class, would have no way of knowing the falsity of the statements and representations of Volkswagen concerning the EPA-compliance and compliance with federal and state emissions testing requirements of the Class Vehicles.

95. In fact, because of Volkswagen's concealment of material facts, the Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, reasonably and justifiably relied on Volkswagen, and acted in a manner different than how they would have acted had they known the true facts. Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, would not have purchased their Class Vehicles if they had known that the vehicles were not EPA-compliant, or would not pass federal or state emissions requirements, or they would not have purchased the vehicles for the price they did.

96. As a direct and proximate result of Volkswagen's fraudulent concealment, Plaintiff and the other members of the National Class and Maryland Sub-Class have suffered actual damages, including but not limited to, paying a premium for "Clean Diesel" technology; paying for expensive diesel gasoline; suffering a diminution in value of their vehicle; knowledge that they have been driving, and must continue to drive, a vehicle that is polluting the environment in a way they specifically intended to avoid when they purchased the vehicle; being unable to complete trade-in transactions or sales that were in progress at the time news of Volkswagen's conduct broke; incurring loans they would not have otherwise incurred; incurring attorneys' fees and costs; and other losses and damages to be determined before trial.

**COUNT IV**  
**UNJUST ENRICHMENT**

97. Plaintiff adopts all of the preceding paragraphs and incorporates them by reference.

98. This claim is brought on behalf of Plaintiff and the Nationwide Class and the Maryland Sub-Class.

99. Many benefits were conferred upon Volkswagen as a result of its conduct described in detail above, including but not limited to, the sale of hundreds of thousands of vehicles across the United States at a premium price.

100. Volkswagen, through its agents, servants, employees, borrowed servants, and subsidiaries, appreciated and was well aware of the benefits conferred upon it by the Plaintiff, and by the members of the Nationwide Class and the Maryland Sub-Class.

101. The circumstances under which Volkswagen received these benefits from the Plaintiff, and from the members of the Nationwide Class and Maryland Sub-Class, render it inequitable for Volkswagen to retain those benefits without payment to Plaintiff and to the members of the Nationwide Class and Maryland Sub-Class. In essence, Volkswagen has been unjustly enriched by the Plaintiff's, and other Class Members', unwitting purchase of a "Clean Diesel" vehicle, and is liable to the Plaintiff, and to the members of the Nationwide Class and Maryland Sub-Class, for the value of the benefit it received at their expense.

**COUNT V**  
**BREACH OF CONTRACT**

102. Plaintiff adopts all of the preceding paragraphs and incorporates them by reference.

103. This claim is brought on behalf of Plaintiff and the Nationwide Class and the Maryland Sub-Class.

104. Volkswagen's misrepresentations and false statements of material fact alleged above, including its failure to disclose that the "Clean Diesel" engine system was not EPA-compliant, and the existence of the "defeat device," caused Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, to purchase a Volkswagen vehicle equipped with a "Clean Diesel" engine. Absent those misrepresentations and false statements, Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, would not have purchased their

vehicles, and/or would not have purchased them at the prices they paid.

105. In purchasing a Clean Diesel vehicle – at a premium price no less – Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, expected a vehicle with reduced emissions and increased fuel economy, but did not receive the benefit of their bargain. There was no meeting of the minds between Volkswagen and Plaintiff, or the members of the Nationwide Class and Maryland Sub-Class, regarding the true nature of the vehicle being purchased.

106. Each and every sale of a Class Vehicle constitutes a contract between Volkswagen and the purchaser. Volkswagen breached these contracts by selling Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, defective vehicles that were not EPA-compliant, and by misrepresenting or failing to disclose that the vehicles were not EPA-compliant and were equipped with a “defeat device.”

107. As a direct and proximate result of Volkswagen’s breach of contract, Plaintiff and the other members of the National Class and Maryland Sub-Class have suffered actual damages, including but not limited to, paying a premium for “Clean Diesel” technology; paying for expensive diesel gasoline; suffering a diminution in value of their vehicle; knowledge that they have been driving, and must continue to drive, a vehicle that is polluting the environment in a way they specifically intended to avoid when they purchased the vehicle; being unable to complete trade-in transactions or sales that were in progress at the time news of Volkswagen’s conduct broke; incurring loans they would not have otherwise incurred; incurring attorneys’ fees and costs; and other losses and damages to be determined before trial.

**COUNT VI**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(MARYLAND CODE, COMMERCIAL LAW § 2-314 and § 2-711 et seq.)**

108. Plaintiff adopts all of the preceding paragraphs and incorporates them by reference.

109. This claim is brought on behalf of Plaintiff and the Maryland Sub-Class.

110. In selling the Class Vehicles to Plaintiff, and to the members of Maryland Sub-Class, Volkswagen warranted that those vehicles were compliant with EPA emissions standards, and that they would pass federal and state emissions testing requirements. This warranty constituted an implied warranty of merchantability in accordance with Section 2-314 of the Commercial Law Article of the Maryland Code.

111. In fact, as set forth above, because of the conduct of Volkswagen in installing “defeat devices,” and in concealing the existence of those devices from the consumer, the Class Vehicles did not comply with EPA standards, or with other emissions-related federal and state standards.

112. As a direct and proximate result of Volkswagen’s implied warranty of merchantability regarding the compliance of the Class Vehicles with EPA and other relevant federal and state emissions standards, Plaintiff and the other members of the Maryland Sub-Class have suffered actual damages, including but not limited to, paying a premium for “Clean Diesel” technology; paying for expensive diesel gasoline; suffering a diminution in value of their vehicle; knowledge that they have been driving, and must continue to drive, a vehicle that is polluting the environment in a way they specifically intended to avoid when they purchased the vehicle; being unable to complete trade-in transactions or sales that were in progress at the time news of Volkswagen’s conduct broke; incurring loans they would not have otherwise incurred; incurring attorneys’ fees and costs; and other losses and damages to be determined before trial.

**COUNT VII**  
**CIVIL CONSPIRACY**

113. Plaintiff adopts all of the preceding paragraphs and incorporates them by reference.

114. This claim is brought on behalf of Plaintiff and the Nationwide Class and the Maryland Sub-Class.

115. Defendants, as institutions and by and through their agents, servants, employees, apparent agents, borrowed servants, and subsidiaries, entered into an agreement and understanding to conduct the unlawful and tortious conduct described in detail above. They coordinated efforts, shared information, and planned to purposefully install “defeat devices” into the Class Vehicles, and to conceal the existence of these devices from the Plaintiff, the public at large, and the Federal and State Governments and their regulatory agencies.

116. The purpose of Defendants’ coordinated efforts and conspiracy was to conceal the true nature of the Class Vehicles so as to maximize profits, in the United States and around the world.

117. As a result of the Defendants’ conspiracy to defraud the world’s motoring public, Plaintiff and the other members of the National Class and Maryland Sub-Class have suffered actual damages, including but not limited to, paying a premium for “Clean Diesel” technology; paying for expensive diesel gasoline; suffering a diminution in value of their vehicle; knowledge that they have been driving, and must continue to drive, a vehicle that is polluting the environment in a way they specifically intended to avoid when they purchased the vehicle; being unable to complete trade-in transactions or sales that were in progress at the time news of Volkswagen’s conduct broke; incurring loans they would not have otherwise incurred; incurring attorneys’ fees and costs; and other losses and damages to be determined before trial.

**COUNT VIII**  
**PUNITIVE DAMAGES**

118. Plaintiff adopts all of the preceding paragraphs and incorporates them by reference.

119. This claim is brought on behalf of Plaintiff and the Nationwide Class and the Maryland Sub-Class.

120. In perpetrating the acts described in Counts I through V above, Volkswagen, as an institution, and by and through its agents, servants, employees, and borrowed servants, acted with actual malice, acted unlawfully, deliberately, knowingly, intentionally, and/or wantonly, and in an extraordinary and outrageous manner characterized by wanton and reckless disregard for the rights of the Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class. The actions of Volkswagen and its agents, servants, employees, borrowed servants, and subsidiaries described in this Complaint were undertaken without legal justification or excuse, but instead, with an evil or rancorous motive, the purpose being to deliberately and willfully derive a financial benefit from the Plaintiff, and from the members of the Nationwide Class and Maryland Sub-Class, and to act with reckless disregard for their property and legal rights.

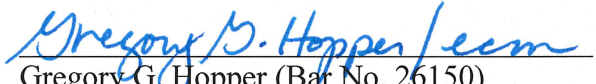
121. As a result of the malicious, unlawful, deliberate, knowing, intentional, wanton, extraordinary and outrageous conduct associated with Volkswagen's intentional misrepresentation; fraud; deceit; concealment; unjust enrichment; and other actions described in the Counts above, the allegations of which are expressly incorporated herein by reference, Plaintiff, and the members of the Nationwide Class and Maryland Sub-Class, are entitled to an award of punitive damages.

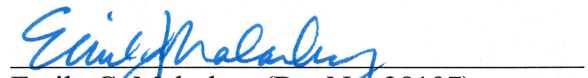



**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of a class of similarly situated individuals, request judgment as follows:

- a. An order certifying this action as a Class Action;
- b. An order appointing Plaintiff as Representative of the Class and her counsel of record as Class Counsel;
- c. An award of actual, general, special, incidental, statutory, compensatory, consequential, restitution, and punitive damages;
- d. An order requiring the Defendants to pay both pre- and post-judgment interest on all damages awarded;
- e. An order of Attorneys' fees and costs; and
- f. All other relief as is appropriate under the law.

  
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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 NOx trap). 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 (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 AECDs<sup>1</sup> 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

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<sup>1</sup> 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;<sup>[1]</sup> 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.<sup>[2]</sup> 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).

<sup>[1]</sup> \$2,750 for violations occurring prior to January 13, 2009.

<sup>[2]</sup> \$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:

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U.S. EPA, Air Enforcement Division  
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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