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

STEVEN E. BRIER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT FOR (1) COMMON LAW FRAUD; (2) UNJUST ENRICHMENT; (3) BREACH OF EXPRESS WARRANTY; (4) VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT; (5) VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT; (6) VIOLATIONS OF THE NEW JERSEY RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT; AND (7) VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT

Plaintiff, Steven E. Brier (“Plaintiff” or “Brier”), by his undersigned counsel and for his Class Action Complaint and Demand for Jury Trial (“Complaint”) against Defendant, Volkswagen Group of America, Inc. (“Volkswagen”), hereby alleges and says as follows:

INTRODUCTION AND SUMMARY OF ALLEGATIONS

1. For more than six years, Volkswagen has intentionally and systematically cheated its customers, lied to the U.S. Government, and misled the public about the efficacy of its four cylinder diesel-engine vehicles sold under the Volkswagen and Audi brands. Volkswagen has marketed its so-called “clean diesel” vehicles as high performing, fuel efficient, and environmentally-friendly. In truth, Volkswagen’s clean diesel vehicles are anything but clean.

2. Instead, the Class Vehicles, as defined in Paragraph 3, emit noxious pollutants at up to 40 times the legal limit allowed under federal and state law. In order to conceal this inconvenient truth from regulators and the public, Volkswagen installed a sophisticated software algorithm, or “defeat device,” in the Class Vehicles that instructs them to cheat on emissions tests; that is, to engage full emissions controls only when undergoing official emissions testing. At all other times, the emissions controls are de-activated, and the vehicles emit extremely high, and illegal, levels of pollutants. “Truth in Engineering” is Audi’s official slogan. Ironically, these Audis (and Volkswagens) were engineered to deceive.

3. As used in this Complaint, the term “Class Vehicles” refers to Volkswagen and Audi vehicles sold in the United States with four cylinder Type EA 189 and EA 288 diesel engines, which share a common, uniform, deceitful, and harmful design, because they (a) emit high and illegal levels of pollutants in normal operation; (b) are equipped with a defeat device enabling them to bypass emissions regulations; and (c) cannot deliver the advertised combination

of low emissions, fuel economy, and high performance for which they were marketed and advertised. The Class Vehicles include at least the following makes and model years:

- 2009 to 2015 Volkswagen Jetta
- 2009 to 2014 Volkswagen Jetta SportWagen
- 2012 to 2015 Volkswagen Beetle
- 2012 to 2015 Volkswagen Beetle Convertible
- 2010 to 2015 Volkswagen Golf
- 2015 Volkswagen Golf SportWagen
- 2012 to 2015 Volkswagen Passat
- 2010 to 2015 Audi A3

4. Volkswagen has admitted that the defeat device was present in approximately 482,000 Class Vehicles sold in the United States, and more than 11 million vehicles worldwide. Thousands of Class Vehicles were sold in the State of New Jersey.

5. Plaintiff Brier is among those who were deceived and cheated by Volkswagen and who purchased and/or leased a Class Vehicle based on Volkswagen's misrepresentations and omissions. He brings this action individually and on behalf of a Class of all persons similarly situated in the United States who purchased or leased a Class Vehicle and a Subclass of New Jersey residents who purchased or leased a Class Vehicle (the "Class Members").

JURISDICTION AND VENUE

6. Subject matter jurisdiction arises under 28 U.S.C. § 1331, based upon the federal claim(s) asserted under the Racketeer Influenced and Corrupt Organizations ("RICO"), 18 U.S.C. §§ 1961-1968. In addition, this Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Jurisdiction is also proper in this Court pursuant to the

Class Action Fairness Act, 28 U.S.C. § 1332(d), because Plaintiff and many members of the proposed Class are citizens of states different from Volkswagen's home states of New Jersey and Virginia, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

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

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Volkswagen is incorporated under the laws of the State of New Jersey and a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this District. Plaintiff resides in and purchased his Class Vehicles in this District. Moreover, Volkswagen conducts has marketed, advertised, sold, and leased the Class Vehicles in this District, and has caused harm to Class Members residing in this District.

PARTIES

Plaintiff

9. Plaintiff Brier is a resident and citizen of Maplewood, Essex County, New Jersey. In June 2010, Brier purchased a new 2010 Volkswagen Jetta sedan, VIN 3VWRL7AJ2AM121056. In June 2015, Brier purchased a new 2014 Volkswagen Jetta SportsWagen, VIN 3VWPL7AJ9EM626928. Brier purchased these Class Vehicles, and was willing to pay more for the "clean diesel" models, because of the advertised combination of low emissions, good fuel economy, and high torque and performance, and because of the Class Vehicles' reputation for maintaining a high resale value for a long time. Brier feels betrayed by Volkswagen's fraud, and he has suffered and continues to suffer significant financial damage. Unbeknownst to Brier, at the time of their acquisition, the Class Vehicles contained a defeat device designed to bypass emissions standards and deceive consumers and regulators, and the

vehicles could not deliver the advertised combination of low emissions, high performance, and fuel economy. Brier is concerned that any proposed “fix” to the Class Vehicles’ emissions will result in decreased fuel economy and/or worse performance, undercutting the reason he purchased the vehicles, and greatly diminishing its resale value.

Defendant

10. Although Defendant Volkswagen is a corporation doing business in every state of the United States, it was organized and incorporated under the laws of New Jersey. VW was founded in Englewood Cliffs, New Jersey, in 1955. Although it is now headquartered in Herndon, Virginia, Volkswagen maintains a strong corporate presence in the State of New Jersey. The VW/Audi/VCI Eastern Region offices are located in Woodcliff Lake, New Jersey. VW maintains its Product Liaison Group in Ridgefield, Edgewater, and Allendale, New Jersey. VW maintains its American Engineering and Environmental office in Allendale, New Jersey, and its Parts Distribution Center in Cranbury, New Jersey.

11. At all relevant times, Volkswagen manufactured, distributed, sold, leased, and warranted the Class Vehicles under the Volkswagen and Audi brand names throughout the nation. Volkswagen designed and manufactured the Class Vehicles, and created and distributed the manuals, advertisements, and other promotional materials relating to the Class Vehicles.

FACTUAL BACKGROUND

12. This case arises from Volkswagen’s unprecedented (and, until recently successful) efforts to cheat consumers, deceive the public, and bypass federal and state regulations.

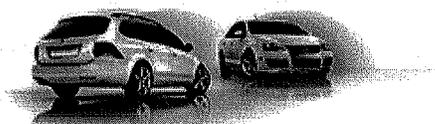
A. Volkswagen Marketed The Class Vehicles As High-Performance, Eco-Friendly, And Fuel-Efficient Diesel Vehicles

13. Diesel vehicles are generally more fuel efficient and powerful than gasoline engines. Diesel engines, however, emit higher levels of certain pollutants as a by-product of combustion.

14. Volkswagen attempted to address this problem with its so-called “clean diesel” vehicles. In an effort to make the Class Vehicles more marketable and induce consumers to pay premium prices, Volkswagen claimed its clean diesel TDI (turbocharged direct injection) engines combined fuel efficiency and high performance with low emissions. The combination of these three characteristics was the primary selling point for the Class Vehicles and was the centerpiece of Volkswagen’s advertising efforts.

15. Some advertisements, for example, specifically emphasized the low emissions and eco-friendliness of the vehicles:





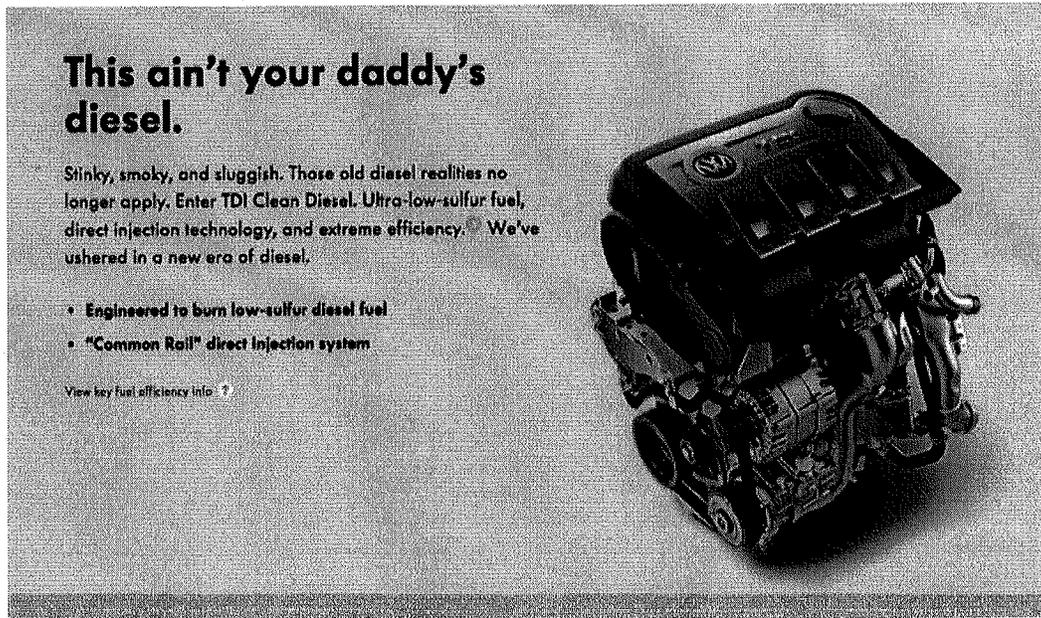
Ultra low emissions. Jetta TDI Clean Diesel.



16. Other advertisements touted the combination of fuel efficiency and power:

Volkswagen Turbo Diesel Injection.
Less fuel consumption with added engine power.

17. Yet other advertisements addressed the full package, implying that in contrast to the “stinky, smoky, and sluggish” diesel vehicles of old, Volkswagen’s new diesel vehicles were clean, efficient, and powerful all at once:



18. The foregoing print advertisements were distributed via the United States mail and via the Internet, a means of interstate and international wire communications.

19. Volkswagen also broadcast similar advertisements on television and on the Internet. An example of a commercial touting how “clean” Volkswagen diesels is available at <https://www.youtube.com/watch?v=WNS2nvkjARk> (last visited September 22, 2015).

Examples of commercials touting the fuel efficiency of Volkswagen diesels are available at <https://www.youtube.com/watch?v=a2CNHVXvNRo> (last visited September 22, 2015), and

<https://www.youtube.com/watch?v=wj3if2gRWYE> (last visited September 22, 2015). An

example of a commercial touting the performance of Volkswagen diesels is available at <https://www.youtube.com/watch?v=0VA51xWXZ3g> (last visited September 22, 2015).

20. Volkswagen's efforts were a resounding success as Volkswagens and Audis became the highest-selling diesel passenger cars in the United States.

21. Unfortunately, the "clean diesel" vehicles were a sham. The truth of the manner in which these so-called "clean diesels" were designed and engineered was far stranger than the fiction under which Volkswagen sold them.

B. Volkswagen Lied To Its Consumers And Deliberately Concealed The Excessive And Unlawful Levels Of Pollution Emitted By Many Of Its So-Called "Clean Diesel" Vehicles

22. For years, Volkswagen failed to disclose to the public and to consumers the presence of the defeat devices in the Class Vehicles and the true nature of its Class Vehicles' performance and emissions.

23. On September 18, 2015, the U.S. Environmental Protection Agency ("EPA") served Volkswagen with a Notice of Violation ("NOV") of the Clean Air Act. The NOV explains that Volkswagen secretly installed a defeat device in certain of its diesel vehicles. As described above, the defeat device is a complex software algorithm which enables the vehicles to bypass emissions standards by engaging the emission control function only during official emissions testing and rendering it inoperative at all other times.

24. In short, vehicles equipped with the defeat device software meet emissions standards only during testing; in normal operation they emit pollutants, including nitrogen oxides ("NOx"), at up to 40 times the legal limit.

25. As noted in the EPA's official press release, NOx is dangerous:

NOx pollution contributes to nitrogen dioxide, ground-level ozone, and fine particulate matter. Exposure to these pollutants has been linked with a range of serious health effects, including increased asthma attacks and other respiratory illnesses that can be serious enough to send people to the hospital. Exposure to ozone and particulate matter have also been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and

people with pre-existing respiratory disease are particularly at risk for health effects of these pollutants.

26. Unsurprisingly, then, defeat devices are illegal. The federal Clean Air Act expressly prohibits engine parts or components which “bypass, defeat, or render inoperative” the emission control system. 42 U.S.C. § 7522(a)(3)(B). Volkswagen’s software did just that, and in so doing, violated the Clean Air Act.

27. Volkswagen also violated the Clean Air Act by falsely certifying to the EPA that the Class Vehicles would meet applicable federal emission standards to obtain the EPA-issued Certificate of Conformity, which is required to sell vehicles in the United States.

28. The “defeat device” software was designed by Robert Bosch GmbH (“Bosch”), a German company which is the world’s largest manufacturer of automotive components. Bosch sold many other components to Volkswagen AG.

29. Bosch now claims that the defeat device software was originally designed only for experimental purposes and that Bosch allegedly warned Volkswagen as early as 2007 that use of the software in actual conditions could violate applicable laws. However, there is no legitimate purpose for the defeat device software that Bosch developed and sold to Volkswagen AG.

30. In 2011, a group of Volkswagen engineers discovered the use of the defeat device and brought it, and the fact that the device was illegal, to the attention of Volkswagen’s management. However, their report to management went nowhere.

C. Once Caught, Volkswagen Admitted Its Fraud

31. Volkswagen AG Chief Executive Officer Martin Winterkorn has already acknowledged the fraud and issued an apology for having “broken the trust of our customers and the public.”

32. Similarly, Volkswagen Group of America, Inc.'s Chief Executive Officer, Michael Horn, conceded that Volkswagen "was dishonest with the EPA, and the California Air Resources Board, and with all of you." He went on to admit that Volkswagen "totally screwed up" and that it "must fix the cars."

D. Volkswagen Has Reaped Considerable Profit From Its Fraud

33. Volkswagen charged premiums of several thousands of dollars for the Clean Diesel models of the Class Vehicles. These premiums are represented in the chart below and reflect the value consumers placed on the advertised features of the Clean Diesel vehicles and paid to obtain, and which Volkswagen promised to all, but delivered to no one:

Clean Diesel Price Premium				
Model	Base	Mid-Level	Top-Level	Average
VW Jetta	\$2,860.00	\$1,570.00	\$1,030.00	\$1,820.00
VW SportWagen	\$5,570.00	\$1,680.00	\$0.00	\$2,416.67
VW Golf	\$2,400.00	\$1,000.00	\$1,000.00	\$1,466.67
VW Golf SportWagen	\$2,950.00	\$1,000.00	\$1,000.00	\$1,650.00
VW Beetle	\$4,635.00	\$4,920.00	\$0.00	\$3,185.00
VW Beetle Convertible	\$4,080.00	\$530.00	\$700.00	\$1,770.00
VW Passat	\$5,755.00	\$2,845.00	\$2,135.00	\$3,578.33
Audi A3	\$2,300.00	\$2,300.00	\$2,300.00	\$2,300.00
Average	\$3,818.75	\$1,980.63	\$1,020.63	\$2,273.33

34. Had Volkswagen revealed the truth about the Class Vehicles, eco-conscious consumers like Plaintiff Brier would likely have taken their business to other automobile manufacturers.

E. Plaintiff And Class Members Have Suffered Significant Harm As A Result Of Volkswagen's Unlawful Actions

35. Volkswagen will not be able to adequately fix the vehicles. The EPA has ordered Volkswagen to bring the Class Vehicles into compliance with the emissions standards of the Clean Air Act, but doing so will materially compromise the vehicles' performance and/or fuel efficiency. Even if Volkswagen is able to make the Class Vehicles EPA-compliant through a

retrofit, the vehicles will no longer perform as previously represented to the public and consumers, and Plaintiff and Class Members will be deprived of the benefits Volkswagen promised and for which they bargained when they purchased or leased the Class Vehicles.

36. As a result, the Class Vehicles do not function as reasonable consumers expect, and have lost considerable value. Moreover, Plaintiff and Class Members will incur additional expenses at the pump as a result of the decreased fuel efficiency.

37. Volkswagen failed to disclose these material facts to the public and to consumers. Had Plaintiff and Class Members known of the defect at the time they decided to purchase or lease the Class Vehicles, they would have declined to purchase or lease the vehicles, or would have paid considerably less than they did.

38. In sum, Volkswagen's deliberate deception has caused significant harm to Plaintiff, Class Members, and the public.

TOLLING OF THE STATUTE OF LIMITATIONS

Fraudulent Concealment

39. Volkswagen concealed its fraud from the Class. Upon information and belief, Volkswagen has known of the defeat devices installed in the Class Vehicles since at least 2009 when it began installing them, and has intentionally concealed from or failed to notify Plaintiff, Class Members, and the public of the defeat devices and the true emissions and performance of the Class Vehicles.

40. The defeat device is a complicated software algorithm designed only to detect emissions testing conditions to selectively initiate the full emissions controls and trick the emissions test. The defeat device could only have been installed intentionally by Volkswagen, and the only purpose of the code is to deceive regulators, consumers, and the public.

41. Despite knowing about the defeat device and unlawful emissions, Volkswagen did not acknowledge the problem until after the EPA issued its NOV on September 18, 2015.

42. Any applicable statute of limitation has, therefore, been tolled by Volkswagen's knowledge and active concealment of the facts alleged herein.

Estoppel

43. Volkswagen was and is under a continuous duty to disclose to Plaintiff and Class Members the true character, quality, and nature of the vehicles. Instead, it actively concealed the true character, quality, and nature of the vehicles and knowingly made misrepresentations about the quality, reliability, characteristics, and performance of the vehicles. Plaintiff and Class Members reasonably relied upon Volkswagen's knowing and affirmative misrepresentations and/or active concealment of these facts. Based on the foregoing, Volkswagen is estopped from relying on any statutes of limitation in defense of this class action.

Discovery Rule

44. The causes of action alleged herein did not accrue until Plaintiff and Class Members discovered that the Class Vehicles had the defeat devices and were not delivering the low emissions that were advertised and warranted by Volkswagen.

45. Plaintiff and Class Members had no realistic ability to discover the presence of the defeat devices, or to otherwise learn of the fraud, until it was discovered by the EPA and California Air Resources Board and revealed to the public on September 18, 2015.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings this lawsuit as a class action on his own behalf and on behalf of all other persons similarly situated as members of the proposed Class, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2) and/or c(4). This action satisfies the numerosity,

commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

47. The proposed Classes are defined as:

Nationwide Class

All persons or entities in the United States that purchased or leased a Class Vehicle, as defined herein.

New Jersey Subclass

All Persons or entities in New Jersey that purchased or leased a Class Vehicle, as defined herein.

48. Excluded from the Nationwide Class and the New Jersey Subclass (the “Classes”) are (a) Volkswagen, any entity or division in which Volkswagen has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (b) the Judge to whom this case is assigned and the Judge’s staff; (c) governmental entities; and (d) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiff reserves the right to amend the definitions of the Classes if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses, or modified in any other way.

Rule 23(a)(1): Numerosity and Ascertainability

49. Although the exact number of Class Members is uncertain, the size of the Classes can be estimated with reasonable precision, and the number is great enough that joinder is impracticable. To date, approximately 482,000 vehicles identified as Class Vehicles have been sold in the United States. Upon information, belief, and logical surmise, thousands of Class Vehicles were sold in New Jersey. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. Class Members are readily identifiable from information and records in Volkswagen’s possession, custody, or

control, and/or from vehicle registration records, including those maintained by the State of New Jersey.

Rule 23(a)(2): Typicality

50. The claims of the representative Plaintiff are typical of the claims of the Classes because Plaintiff Brier, like all Class Members, purchased or leased Class Vehicles designed, manufactured, and distributed by Volkswagen. Plaintiff Brier, like all Class Members, has been damaged by Volkswagen's misconduct because he has incurred losses relating to the Class Vehicles. Further, the factual bases of Volkswagen's misconduct are common to all Class Members and represent a common thread of misconduct resulting in injury to all Class Members.

Rule 23(a)(4): Adequate Representation

51. Plaintiff is a member of the Classes and will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective products generally, and defective automobile parts specifically.

52. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has interests adverse to those of the Class.

Rule 23(a)(3) and (b)(3): Predominance of Common Issues

53. There are numerous questions of law and fact common to Plaintiff and Class Members that predominate over any question affecting only individual Class Members. The answers to these common questions will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

a. whether the Class Vehicles contained a defeat device and emitted unlawful levels of pollutants under normal operation;

b. whether Volkswagen knew or should have known about the defeat device and emission levels in the Class Vehicles;

c. whether the true nature of the Class Vehicles' performance, emissions levels, fuel economy, and the inclusion of the defeat device constitute material facts that reasonable consumers would have considered in deciding whether to purchase a Class Vehicle;

d. whether Volkswagen made material misrepresentations regarding the Class Vehicles.

e. whether Volkswagen had a duty to disclose the true nature of the Class Vehicles to Plaintiffs and Class Members;

f. whether Volkswagen omitted and failed to disclose material facts about the Class Vehicles;

g. whether Volkswagen's concealment of the true nature of the Class Vehicles would have induced a reasonable consumer to act to their detriment by purchasing and/or leasing the Class Vehicles;

h. whether Plaintiff and Class Members are entitled to a declaratory judgment; and,

i. whether Plaintiff and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction.

Rule 23(b)(3): Superiority

54. Plaintiff and Class Members have all suffered and will continue to suffer harm and damages as a result of Volkswagen's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

55. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of

the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Volkswagen's misconduct. Absent a class action, Class Members will continue to incur damages, and Volkswagen's misconduct will continue without remedy.

56. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

57. Volkswagen has acted in a uniform manner with respect to the Plaintiff and Class Members.

Rule 23(b)(1) and (b)(2): Other Forms Of Relief

58. Class-wide declaratory, equitable, and injunctive relief is appropriate under Rule 23(b)(1) and/or (b)(2) because Volkswagen has acted on grounds that apply generally to the class, and inconsistent adjudications with respect to the Volkswagen's liability would establish incompatible standards and substantially impair or impede the ability of Class Members to protect their interests. Class-wide relief assures fair, consistent, and equitable treatment and protection of all Class Members, and uniformity and consistency in Volkswagen's discharge of their duties to perform corrective action regarding the Class Vehicles.

FIRST CAUSE OF ACTION
COMMON LAW FRAUD
(Brought on Behalf of the Nationwide Class)

59. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

60. Plaintiff brings this state law claim for common law fraud on behalf of the Nationwide Class.

61. 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 Plaintiff 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 fuel economy—and inducing their purchases.

62. 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.

63. 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 customers, and all of the materials contained the same standardized general statements relating to the Class Vehicles' environmental friendliness, performance and fuel economy.

64. 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.

65. 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 that Plaintiff 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.

66. 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.

67. 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 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.

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

69. Plaintiff 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.

70. As a result of Volkswagen's inducements, Plaintiff and Class Members have sustained significant damage, including, but not limited to, lost vehicle value and diminished vehicle quality and utility. If Plaintiff 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 Plaintiff and Class Members in an amount to be proven at trial.

71. Volkswagen intentionally designed and engineered its "clean diesel" vehicles to deceive and cheat regulators and its customers. Volkswagen touted the performance and environmental virtues of these vehicles, while concealing and suppressing the truth about them, for the purpose of inducing Plaintiff and the Class 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 vehicles so that they deliver everything it 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.

72. 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 Plaintiff, the public, and the environment. Volkswagen's conduct thus warrants an assessment of punitive damages, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

SECOND CAUSE OF ACTION
UNJUST ENRICHMENT
(Brought on Behalf of the Nationwide Class)

73. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

74. Plaintiff bring this state law claim for unjust enrichment on behalf of the Nationwide Class.

75. Volkswagen has been unjustly enriched because it intentionally sold the Class Vehicles with defeat devices which were intended to mask the fact that the Class Vehicles did not comply with applicable automobile exhaust regulations and could not deliver the combination of low emissions, high performance, and fuel economy promised to consumers.

76. Plaintiff and Class Members conferred a benefit on Volkswagen by purchasing, and paying a premium for, the Class Vehicles.

77. When purchasing their vehicles, Plaintiff and 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 the mileage stated on the window sticker of the vehicles. They also believed that the Class Vehicles would perform as advertised and warranted.

78. Plaintiff and 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. Moreover, the Class Vehicles did not deliver the promised combination of low emissions, high performance, and fuel economy that Plaintiff and Class Members bargained for.

79. Volkswagen knows of and appreciates the benefit conferred by Plaintiff and Class Members and has retained that benefit notwithstanding its knowledge that the benefit is unjust.

80. The foregoing did not occur by happenstance or conditions out of Volkswagen'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 Volkswagen to not comply with applicable regulations under ordinary driving conditions.

81. Volkswagen should therefore be required to disgorge the unjust enrichment.

THIRD CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY
(Brought on Behalf of the Nationwide Class)

82. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

83. Plaintiff brings this state law claim for breach of express warranty on behalf of the Nationwide Class.

84. By advertising the "green" and "clean" qualities of its diesel engines, Volkswagen expressly warranted to Plaintiff and Class Members that the vehicles at least complied with all applicable laws and regulations relating to exhaust emissions, as it would be impossible for an automobile to be "green" if it emitted more pollutants than were allowed by applicable environmental laws and regulations.

85. Moreover, by advertising the low emissions in combination with statements regarding the performance, torque, and fuel efficiency, Volkswagen warranted to purchasers of the Class Vehicles that the vehicles would exhibit this combination of characteristics. Such

statements became the basis of the bargain for Plaintiff and other Class Members because such statements are among the facts a reasonable consumer would consider material in the purchase of a vehicle.

86. In fact, in ordinary driving conditions, the Class Vehicles did not comply with applicable environmental regulations, and instead emitted between 10 and 40 times the amount of pollutants allowed during normal operation. As such, it was unlawful for Volkswagen to sell the vehicles to the public.

87. In addition, Volkswagen stated that the vehicles achieved certain fuel economy when tested in accordance with applicable EPA regulations. Those statements created an express warranty that the vehicle achieved the stated fuel efficiency, allowing consumers to make apples-to-apples comparisons with other vehicles.

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

89. In fact, had the Class Vehicles been tested in accordance with EPA fuel efficiency standards while also complying with pollution regulations, they would have achieved significantly lower fuel efficiency than was stated on the EPA mileage sticker on the vehicle.

90. 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.

91. As a result of the foregoing breaches of express warranty, Plaintiff and other Class Members have been damaged in that they purchased vehicles that were unlawfully sold, did not comply with government regulations, did not perform as promised, and were less

valuable than what they paid for.

FOURTH CAUSE OF ACTION
VIOLATIONS OF MAGNUSON-MOSS ACT, 15 U.S.C. § 2301 ET SEQ. –
IMPLIED WARRANTY
(Brought on Behalf of the Nationwide Class)

92. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

93. Plaintiff brings this federal claim for violations of the Magnuson-Moss Act (the “Act”), 15 U.S.C. § 2301 *et seq.*, on behalf of the Nationwide Class.

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

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

96. Volkswagen is a “supplier” and “warrantor” within the meaning of the Act, 15 U.S.C. § 2301(4)-(5).

97. Section 2310(d)(1) of the Act 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.

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

99. Volkswagen breached these implied warranties, as described in more detail above, and are therefore liable to Plaintiffs and the Class pursuant to Section 2310(d)(1) of the Act.

100. 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.

101. Plaintiff and the other Class Members have had sufficient direct dealings with either Volkswagen or its agents (dealerships) to establish privity of contract.

102. Nonetheless, privity is not required here because Plaintiff and other Class Members are intended third-party beneficiaries of contracts between Volkswagen 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 consumers.

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

104. Plaintiff's individual claims place into controversy an amount equal to or exceeding \$25. The amount in controversy of this entire 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. Plaintiff, individually and on behalf of the other Class Members, seeks all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff 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 Plaintiff and the other Class Members in connection with the commencement and prosecution of this action.

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

FIFTH CAUSE OF ACTION
VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT
(Brought on Behalf of the Nationwide Class)

106. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

107. Plaintiffs bring this claim alleging violations of Section 1962(c) of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), on behalf of the Nationwide Class.

108. Plaintiff and Class Members, and each of them, are "person[s]" injured in their "business or property" by reason of the Volkswagen's violations of RICO, within the meaning of 18 U.S.C. § 1964(c). As such, Plaintiff and Class Members have standing to assert this claim.

109. Volkswagen, Volkswagen AG, and Bosch, and each of them, are "person[s]," as that term is defined in 18 U.S.C. § 1961(3).

110. Volkswagen, Volkswagen AG, and Bosch violated 18 U.S.C. § 1962(c) by participating in or conducting the affairs of the Clean Diesel RICO Enterprise through a pattern of racketeering activity by repeatedly defrauding consumers. The methodology of their scheme to defraud is set forth in this Complaint and is described in this claim. The persons participating

in the Clean Diesel RICO Enterprise and their respective roles in the Enterprise are set forth below.

111. For purposes of this RICO claim, Volkswagen, Volkswagen AG, and Bosch undertook a fraudulent scheme to sell the Class Vehicles through the use of false and misleading statements and omissions relating to the environmental and performance qualities of the Class Vehicles through the use of the U.S. mails and interstate and international wire, radio, and television transmissions.

112. At all relevant times and as described above, Volkswagen, Volkswagen AG, and Bosch carried out their scheme to defraud Plaintiff and other Class Members in connection with the conduct of an “enterprise,” as that term is defined in 18 U.S.C. § 1961(4).

113. The Enterprise consisted of the following persons, and others presently unknown, who constitute an “association-in-fact enterprise” within the meaning of RICO and who collectively constitute the “Clean Diesel RICO Enterprise” or the “Enterprise”:

- a. Volkswagen;
- b. Volkswagen AG; and
- c. Bosch.

114. The Clean Diesel RICO Enterprise, whose activities affected interstate and foreign commerce, is an association-in-fact of individuals and corporate entities, within the meaning of 18 U.S.C. § 1961(4), and consists of persons associated together for the common purpose of selling the Class Vehicles that the members of the Clean Diesel RICO Enterprise knew did not actually comply with U.S. environmental laws, were not “green,” and could not deliver the performance and fuel efficiency promised by Volkswagen if the Class Vehicles had complied with U.S. environmental laws.

115. Volkswagen, Volkswagen AG, and Bosch and their respective officers and employees together developed the Class Vehicles with the defeat device, and Volkswagen and Volkswagen AG developed the false, misleading and/or deceptive advertisements for them, as described above.

116. The Clean Diesel RICO Enterprise was formed in or about 2009 and continues to the present time.

117. The Clean Diesel RICO Enterprise was separate and distinct from the pattern of racketeering activity. The Enterprise was an ongoing organization or group and existed to advance the interests of the individual entities that comprise its membership, *i.e.*, selling the Class Vehicles described above. The Clean Diesel RICO Enterprise members all served the common purpose of selling as many Class Vehicles as possible, therein maximizing their own profits and revenues and sharing the bounty derived from deceived and defrauded consumers. Each member of the Clean Diesel RICO Enterprise benefited from the common purpose: Volkswagen and Volkswagen AG sold more Class Vehicles, and received more for those than they otherwise would have, had the Class Vehicles been truthfully advertised, marketed and labeled; because Volkswagen and Volkswagen AG sold more Class Vehicles, Bosch sold more components to go into the Class Vehicles, thereby earning more profits than it would have otherwise.

118. The Clean Diesel RICO Enterprise also exists for the legitimate purpose of selling automobiles. It operates within a framework that includes the sale of other automobiles that are not infected with fraud. Each member of the Enterprise performs a role in the group consistent with its structure that furthers the activities of the Clean Diesel RICO Enterprise in connection with the Enterprise members' sale of Class Vehicles to consumers.

119. Alternatively, the Enterprise was formed solely for the purpose of carrying out the pattern of racketeering activity described herein.

120. Through the conduct of the Enterprise, Volkswagen, Volkswagen AG, and Bosch undertook a fraudulent scheme to sell the Class Vehicles based upon the false and misleading misrepresentations and omissions set forth herein.

121. Through this scheme, Volkswagen, Volkswagen AG, Bosch, and others agreed to utilize the false and misleading representations and omissions relating to the Class Vehicles in a conscious and deliberate effort to sell Vehicles products at a premium price that, in fact, the Class Vehicles were not “green,” and could not achieve the advertised performance and fuel efficiency had they complied with applicable environmental laws. Alternatively, the Class Vehicles sold through the Clean Diesel RICO Enterprise had significantly less value than consumers paid for them because they were illegal to sell in the first instance and now have significantly lower resale value as a result of the fraud becoming public.

122. In furtherance of the scheme, the Volkswagen and Volkswagen AG engaged in thousands of acts of mail fraud and wire fraud, in violation of 18 U.S.C. §§ 1341 and 1343, each of which constitute “racketeering activity,” as that term is defined in 18 U.S.C. § 1961(1).

123. Those acts of mail fraud and wire fraud include generally distributing the false and misleading marketing materials described herein via the U.S. mails, television, radio, and the Internet to members of the public, as well as communicating among themselves with respect to the scheme via interstate and international e-mail and telephone with the common purpose of selling the Class Vehicles to an unsuspecting public based upon the fraudulent and deceptive representations and omissions described above.

124. In addition to the foregoing, each download or view of one of advertisements and videos on the Internet constituted a separate offense of wire fraud.

125. As a direct result of the foregoing violations of 18 U.S.C. § 1962(c), Plaintiff and Class Members have been injured in their business and/or property in multiple ways, including that they paid for Class Vehicles which did not, and could not, provide the benefits promised in the advertisements and other promotional materials associated with the Vehicles and incurred resulting out-of-pocket losses.

126. But for the predicate acts described above – Volkswagen and Volkswagen AG’s numerous false and misleading statements (and marketing and advertising containing omissions) sent via the U.S. mail and interstate wires – Plaintiff and Class Members would not have paid as high a price for the Class Vehicles as they did, or would not have purchased the Class Vehicles at all.

127. The RICO violations described herein have directly and proximately caused injuries and damages to Plaintiff and Class Members, and Plaintiff and Class Members are entitled to bring this action for three times their actual damages, as well as injunctive and/or equitable relief and costs and reasonable attorneys’ fees pursuant to 18 U.S.C. §§ 1964(a) and 1964(c).

SIXTH CAUSE OF ACTION
VIOLATIONS OF NEW JERSEY RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS STATUTE
(Brought on Behalf of the New Jersey Subclass)

128. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

129. Plaintiffs bring this claim alleging violations of the New Jersey's Racketeer Influenced and Corrupt Organizations statute ("NJRICO"), N.J. Stat. Ann. §§ 2C:41-1 to 2C:41-6.2, on behalf of the New Jersey Subclass.

130. Plaintiff and Class Members, and each of them, are "person[s]" damaged in their "business or property" by reason of the Volkswagen's violations of NJRICO, within the meaning of N.J. Stat. Ann. § 2C:41-4(c). As such, they have standing to bring this claim.

131. Volkswagen, Volkswagen AG, and Bosch, and each of them, are "person[s]," as that term is defined in N.J. Stat. Ann. § 2C:41-1(b).

132. NJRICO provides that "[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in or the activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity." N.J. Stat. Ann. § 2C:41-2(c). As alleged herein, Volkswagen, Volkswagen AG, and Bosch violated Section 2C:41-2(c) by participating in or conducting the affairs of the Clean Diesel NJRICO Enterprise through a pattern of repeatedly defrauding consumers. The methodology of their scheme to defraud is set forth above and is described in this claim. The persons participating in the Clean Diesel NJRICO Enterprise and their respective roles in the Enterprise are set forth below.

133. For purposes of this Count, Volkswagen, Volkswagen AG, and Bosch undertook a fraudulent scheme to sell the Class Vehicles through the use of false and misleading statements and omissions relating to the environmental and performance qualities of the Class Vehicles through the use of the U.S. mails and interstate and international wire, radio, and television transmissions.

134. At all relevant times and as described above, Volkswagen, Volkswagen AG, and Bosch carried out their scheme to defraud Plaintiff and other Class Members in connection with the conduct of an “enterprise,” as that term is defined in N.J. Stat. Ann. § 2C:41-1(c).

135. The Enterprise consisted of the following persons, and others presently unknown, who constitute an “association-in-fact enterprise” within the meaning of NJRICO and who collectively constitute the “Clean Diesel NJRICO Enterprise” or the “Enterprise”: (a) Volkswagen; (b) Volkswagen AG; and (c) Bosch.

136. The Clean Diesel NJRICO Enterprise, whose activities affected interstate and foreign commerce, is an association-in-fact of individuals and corporate entities, within the meaning of N.J. Stat. Ann. § 2C:41-1(c), and consists of persons associated together for the common purpose of selling the Class Vehicles that the members of the Clean Diesel NJRICO Enterprise knew did not actually comply with U.S. environmental laws, were not “green,” and could not deliver the performance and fuel efficiency promised by Volkswagen if the Class Vehicles had complied with U.S. environmental laws.

137. Volkswagen, Volkswagen AG, and Bosch and their respective officers and employees together developed the Class Vehicles with the defeat device, and Volkswagen and Volkswagen AG developed the false, misleading and/or deceptive advertisements for them, as described above.

138. The Clean Diesel NJRICO Enterprise was formed in or about 2009 and continues to the present time.

139. The Clean Diesel NJRICO Enterprise was separate and distinct from the pattern of racketeering activity. The Enterprise was an ongoing organization or group and existed to advance the interests of the individual entities that comprise its membership, *i.e.*, selling the

Class Vehicles described above. The Clean Diesel NJRICO Enterprise members all served the common purpose of selling as many Class Vehicles as possible, therein maximizing their own profits and revenues and sharing the bounty derived from deceived and defrauded consumers. Each member of the Clean Diesel NJRICO Enterprise benefited from the common purpose: Volkswagen and Volkswagen AG sold more Class Vehicles, and received more for those than they otherwise would have, had the Class Vehicles been truthfully advertised, marketed and labeled; because Volkswagen and Volkswagen AG sold more Class Vehicles, Bosch sold more components to go into the Class Vehicles, thus earning more profits than it would have otherwise.

140. The Clean Diesel NJRICO Enterprise also exists for the legitimate purpose of selling automobiles. It operates within a framework that includes the sale of other automobiles that are not infected with fraud. Each member of the Enterprise performs a role in the group consistent with its structure that furthers the activities of the Clean Diesel NJRICO Enterprise in connection with the Enterprise members' sale of Class Vehicles to consumers.

141. Alternatively, the Enterprise was formed solely for the purpose of carrying out the pattern of racketeering acts described herein.

142. Through the conduct of the Enterprise, Volkswagen, Volkswagen AG, and Bosch undertook a fraudulent scheme to sell the Class Vehicles based upon the false and misleading misrepresentations and omissions set forth herein.

143. Through this scheme, Volkswagen, Volkswagen AG, Bosch, and others agreed to utilize the false and misleading representations and omissions relating to the Class Vehicles in a conscious and deliberate effort to sell Vehicles products at a premium price that, in fact, the Class Vehicles were not "green," and could not achieve the advertised performance and fuel

efficiency had they complied with applicable environmental laws. Alternatively, the Class Vehicles sold through the Clean Diesel NJRICO Enterprise had significantly less value than consumers paid for them because they were illegal to sell in the first instance and now have significantly lower resale value as a result of the fraud becoming public.

144. In furtherance of the scheme, the Volkswagen and Volkswagen AG engaged in thousands of acts of mail fraud and wire fraud, in violation of 18 U.S.C. §§ 1341 and 1343, each of which constitute “racketeering activity,” as that term is defined in N.J. Stat. Ann. § 2C:41-1(a)(2).

145. Those acts of mail fraud and wire fraud include generally distributing the false and misleading marketing materials described herein via the U.S. mails, television, radio, and the Internet to members of the public, as well as communicating among themselves with respect to the scheme via interstate and international e-mail and telephone with the common purpose of selling the Class Vehicles to an unsuspecting public based upon the fraudulent and deceptive representations and omissions described above.

146. In addition to the foregoing, each download or view of one of advertisements and videos on the Internet constituted a separate offense of wire fraud.

147. As a direct result of the foregoing violations of N.J. Stat. Ann. § 2C:41-2(c), Plaintiff and Class Members have been injured in their business and/or property in multiple ways, including that they paid for Class Vehicles which did not, and could not, provide the benefits promised in the advertisements and other promotional materials associated with the Vehicles and incurred resulting out-of-pocket losses.

148. But for the predicate acts described above – Volkswagen and Volkswagen AG’s numerous false and misleading statements (and marketing and advertising containing omissions)

sent via the U.S. mail and interstate wires – Plaintiff and Class Members would not have paid as high a price for the Class Vehicles as they did, or would not have purchased the Class Vehicles at all.

149. The NJRICO violations described herein have directly and proximately caused injuries and damages to Plaintiff and Class Members, and Plaintiff and Class Members are entitled to bring this action for three times their actual damages, as well as injunctive and/or equitable relief and costs and reasonable attorneys' fees pursuant to N.J. Stat. Ann. §§ 2C:41-4(a) and (c).

SEVENTH CAUSE OF ACTION
VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT
(Brought on Behalf of the New Jersey Subclass)

150. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

151. Plaintiffs bring this claim for violations of the New Jersey Consumer Fraud Act (“NJCFA”), N.J. Stat. Ann. § 56:8-1 *et seq.*, on behalf of the New Jersey Subclass.

152. Section 56:8-2 of the NJCFA states:

[A]ny 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. . . .

153. Plaintiff and New Jersey Subclass Members are consumers who purchased and/or leased Class Vehicles for personal, family, or household use.

154. The advertisement, promotion, distribution, supply, sale, or lease of the Class Vehicles is a “sale or advertisement” of “merchandise” governed by the NJCFA.

155. Prior to Plaintiff’s and New Jersey Subclass Members’ purchase of the Class Vehicles, Volkswagen violated the NJCFA by making:

- a. 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; and
- b. false and/or misleading statements about the capacity and characteristics of the Class Vehicles, as set forth above, that were unfair, deceptive, or otherwise fraudulent, had and continue to have the capacity to, and did, deceive the public and cause injury to Plaintiff and New Jersey Subclass Members.

156. Volkswagen, in its communications with and disclosures to Plaintiff and New Jersey Subclass Members, intentionally concealed or otherwise failed to disclose that the Class Vehicles included a software program designed to cheat emissions testing, that the true emissions of those Vehicles were far higher than claimed, and that the Vehicles were incapable of achieving the advertised combination of low emissions, high performance, and fuel efficiency.

157. Plaintiff and New Jersey Subclass Members reasonably expected that the Class Vehicles complied with the represented and claimed emissions both prior to and at the time of purchase, and reasonably expected that Volkswagen did not use software or any other device or system to cheat emissions testing. These representations and affirmations of fact made by Volkswagen, and the facts it 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 subject. Moreover, Volkswagen intended for consumers, including Plaintiff and New Jersey Subclass Members, to rely on these material facts.

158. Volkswagen had exclusive knowledge that the Class Vehicles had and have the defects set forth above which gave rise to a duty to disclose these facts. Volkswagen breached that duty by failing to disclose these material facts.

159. 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 emission levels.

160. Had Plaintiff and New Jersey Subclass Members known about Volkswagen's use of the defeat device, and/or that the Class Vehicles did not comply with Volkswagen's advertised emissions and did not operate as advertised, they would not have purchased and/or leased the Class Vehicles or would have paid less than they did for them.

161. As a direct and proximate result of Volkswagen's actions, Plaintiff and New Jersey Subclass Members have suffered ascertainable loss and other damages.

Plaintiff, individually and on behalf of all others similarly situated, request the Court to enter judgment against Volkswagen, as follows:

- A. An order certifying the proposed Nationwide Class, designating Plaintiff as the named representatives of the Nationwide Class, and designating the undersigned as Class Counsel;
- B. An order certifying the proposed New Jersey Subclass, designating Plaintiff as the named representatives of the New Jersey Subclass, and designating the undersigned as Class Counsel;
- C. A declaration that the Volkswagen is financially responsible for notifying all Class Members about the true nature of the Class Vehicles;
- D. An order enjoining Volkswagen to desist from further deceptive distribution, sales, and lease practices with respect to the Class Vehicles, and directing Volkswagen to permanently, expeditiously, and completely repair the Class Vehicles;
- E. An order compelling Volkswagen to buy back the Class Vehicles on fair and equitable terms, including compensating Plaintiff and Class members for loss of resale value;
- F. An award to Plaintiff and Class Members of compensatory, exemplary, punitive, and statutory penalties and damages, including interest, in an amount to be proven at trial;

G. An award to Plaintiff and Class Members for the return of the purchase prices of the Class Vehicles, with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale, for damages and for reasonable attorney fees;

H. A declaration that the Volkswagen must disgorge, for the benefit of Plaintiff and Class Members, all or part of the ill-gotten profits received from the sale or lease of the Class Vehicles, and make full restitution to Plaintiff and Class Members;

I. An award of treble damages pursuant to RICO, 18 U.S.C. §§ 1964(a) and (c), and NJRICO, §§ 2C:41-4(a) and (c);

J. An award of treble damages pursuant to the NJCFA, N.J. Stat. Ann. § 56:8-19;

K. An award of attorneys' fees and costs, as allowed by law;

L. An award of pre-judgment and post-judgment interest, as provided by law;

M. Leave to amend this Complaint to conform to the evidence produced at trial; and

N. Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

DATED: October 5, 2015

WILENTZ, GOLDMAN & SPITZER, P.A.

By Kevin P. Roddy
KEVIN P. RODDY

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Attorneys for Plaintiff Steven E. Brier

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Steven E. Brier

DEFENDANTS

Volkswagen Group of America, Inc.

(b) County of Residence of First Listed Plaintiff Essex County, NJ
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorneys (Firm Name, Address, Email and Telephone Number)
Kevin P. Roddy, Wilentz, Goldman & Spitzer, P.A., 90 Woodbridge Center Dr., Ste. 900, Woodbridge, NJ 07095 / Telephone: (732) 636-8000 / E-mail: krodgy@wilentz.com

Attorneys (If Known)
Unknown at this time

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
RICO: 18 U.S.C. sec. 1961 et seq.

Brief description of cause:
Class action alleging false and misleading advertising of VW diesel vehicles

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Linares DOCKET NUMBER 2:15-cv-06985-JLL-JAD

DATE
10/05/2015

SIGNATURE OF ATTORNEY OF RECORD

UPZ

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____